IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 508

ANDRES LUCAS and ARCHIE L. LISCO, individually and as citizens of the State of Colorado, taxpayers and electors therein, for themselves and for all other persons similarly situated,

Appellants,

vs.

THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, JOHN LOVE, AS GOVERNOR OF THE STATE OF COLORADO, HOMER BEDFORD AS TREASURER OF THE STATE OF COLORADO, AND BYRON ANDERSON, AS SECRETARY OF STATE OF THE STATE OF COLORADO,

Appellees.

APPELLANTS' BRIEF

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APPELLANTS' BRIEF

Come now the Appellants above named, by their attorneys of record, under and in pursuance of Rule 40 of the Rules of the Supreme Court, and pursuant to an Order of the Court made January 6, 1964, and as their Brief state as follows:

1(a). **Opinions Below:**

This Appeal arises from and upon the Judgment of the United States District Court for the District of Colorado, sitting as a Court of three judges, properly convoked under applicable statute, in consolidated actions, being:

Archie L. Lisco, et al. vs. John Love, et al., No. 7501, *and*

William E. Myrick, et al., vs. The Forty-Fourth General Assembly of the State of Colorado, et al., No. 7637,

which opinion was rendered and entered on July 16, 1963, and is reported in 219 F. Supp. 922, under the title *Lisco vs. Love*. Theretofore, on August 10, 1962, the same Court of three judges in the same action had rendered a Memorandum Opinion, which appears in 208 F. Supp. 471, under the title *Lisco vs. McNichols*.

The Memorandum Opinion has been previously printed as Appendix A of the Jurisdictional Statement herein, and the Opinion and Dissent appear in that same document, as Appendix B and B(1) respectively.

1(b). **Jurisdiction:**

The grounds upon which jurisdiction of the Supreme Court is invoked are as follows:

I. This is a proceeding on appeal from a final judgment of a three-judge Court, involving denial of injunctive and other equitable relief, with reference to alleged unconstitutionality of Statutes and a Constitutional provision

of the State of Colorado. Appeal is taken pursuant to Section 1253, 28 USCA;

> "#1253. Direct appeals from the decisions of three-judge courts. Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

The subject actions directly involve legislative apportionment, and the question of validity, under the Fourteenth Amendment to the Constitution of the United States, of the Constitution of Colorado, as it makes provisions for apportionment, and the Colorado statutes relating thereto. A Colorado constitutional provision, existing from the time of statehood to 1962, and statutes enacted in pursuance thereof, required apportionment after each state census and after each federal census. Essentially, no proper apportionment was had; gross distortions developed; and the existing statutes were declared by the three-judge Court, in the Memorandum Opinion, 208 F. Supp. 471, to be unconstitutional. Thereafter, the Constitution was amended, in such manner as to observe the standard of representation of population in the House of Representatives, but removing the Senate from a population basis of selection, providing for its election from perpetually frozen districts, now involving representational distortion in some cases approximating 4 to 1, and incapable of change within the adopted constitutional structure.

The questions presented are fundamentally equal pro-

tection and due process. In essence, they involve determination whether the populace of any state, by vote and alteration of a State constitution, may deprive other and non-consenting portions of the population of fundamental rights of suffrage and representation claimed by them as citizens of the United States under the Fourteenth Amendment.

II. Time of appeal is submitted to be governed by Title 28, Section 2101, USCA:

"#2101. Supreme Court; time for appeal or certiorari; docketing; stay.

(a) A direct appeal to the Supreme Court from any decision under sections 1252, 1253, and 2282 of this title, holding unconstitutional in whole or in part any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment, or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceedings, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final. * * * "

III. Applicable dates of proceedings in the District Court of the United States are as follows:

1. The initial Memorandum opinion of the Court (Lisco vs. McNichols, 208 F. Supp. 471) was issued August

10, 1962. It appears as Appendix A in the Jurisdictional Statement.

2. Further pleadings having been filed and trial having subsequently been held thereon, there was entered on July 16, 1963, a Memorandum Opinion and Order signed by Hon. Jean S. Breitenstein, United States Circuit Judge, Tenth Circuit, assigned, and Hon. Alfred A. Arraj, Chief Judge, United States District Court for the District of Colorado, (being reported as Lisco vs. Love, 219 F. Supp. 922), appearing as Appendix B in the Jurisdictional Statement.

3. Concurrently, on July 16, 1963, there was filed a Dissenting Opinion by Hon. William E. Doyle, Judge of the United States District Court for the District of Colorado (similarly reported), appearing as Appendix B(1) of the Jurisdictional Statement.

4. Orders of Dismissal, pursuant to the majority opinion, were entered July 16, 1963 (record, pages 205-206).

5. On August 1, 1963, Appellant Lucas filed Notice of Appeal to the Supreme Court of the United States (record, page 397).

6. On September 5, 1963, the Clerk of the District Court transmitted to the Clerk of the Supreme Court the record as previously designated in the Notices of Appeal and in a Counterdesignation of Record.

7. Jurisdictional Statement and Motion to Dismiss or Affirm having been previously filed, this Court has heretofore noted probable Jurisdiction and, on January

6, 1964, has made orders relative to the record herein, dispensing with printing, and providing for the filing of Briefs and for oral argument.

IV. It is submitted that jurisdiction of this appeal is conferred upon the Court by Title 28 USCA, #1253 and #2101, above quoted. All requirements have been complied with at appropriate times.

1(c). **Statutes and Constitutional Provisions Involved:**

Several provisions of the Constitution of Colorado, and several sections of its Statutes, are pertinent to the within proceeding:

I. Article V, Sections 45, 46, and 47 are basic to the present controversy. They are found in Volume I, 1953 Colorado Revised Statutes, on page 307, as follows:

"Section 45. Census.—The general assembly shall provide by law for an enumeration of the inhabitants of the state, in the year of our Lord 1885, and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by authority of the United States, shall revise and adjust the apportionment for Senators and Representatives, on the basis of such enumeration according to ratios to be fixed by law.

"Section 46. Number of members of general assembly.—The senate shall consist of not more than thirty-five and the house of not more than sixty-five members.

"Section 47. Senatorial and representative districts.

—Senatorial and representative districts may be altered from time to time, as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the district as compact as may be. No county shall be divided in the formation of a senatorial or representative district."

II. Those provisions of the Colorado Constitution purportedly have been amended by an Amendment, adopted at the elections of November, 1962, and commonly referred as Amendment No. 7. The amendment was voted November 6, 1962. It appears as Chapter 312, Session Laws of Colorado, First Regular Session 1963, commencing at page 1045, as follows:

AN ACT TO AMEND ARTICLE V OF THE STATE CONSTITUTION PROVIDING FOR THE APPORTIONMENT OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE GENERAL ASSEMBLY AND PROVIDING FOR SENATORIAL DISTRICTS AND REPRESENTATIVE DISTRICTS.

Be It Enacted by the People of the State of Colorado:
Section 1. Sections 45, 46 and 47 of Article V of the Constitution of Colorado are hereby repealed and new Sections 45, 46, 47 and 48 of Article V are adopted, to read as follows:

Section 45.—General Assembly.—The general assembly shall consist of 39 members of the senate and 65 members of the house, one to be elected from each senatorial and representative district. Districts of the same house shall not overlap. All districts shall be as compact as may be and shall consist of contiguous

whole general election precincts. No part of one county shall be added to another county or part of another county in forming a district. When a district includes two or more counties they shall be contiguous.

Section 46. — House of Representatives. — The state shall be divided into 65 representative districts which shall be as nearly equal in population as may be.

Section 47.—Senate.—The state shall be divided into 39 senatorial districts. This apportionment of senators among the counties shall be the same as now provided by 63-1-3 of Colorado Revised Statutes 1953, which shall not be repealed or amended other than in numbering districts, except that the counties of Cheyenne, Elbert, Kiowa, Kit Carson and Lincoln shall form one district, and one additional senator is hereby apportioned to each of the counties of Adams, Arapahoe, Boulder and Jefferson. Within a county to which there is apportioned more than one senator, senatorial districts shall be as nearly equal in population as may be.

Section 48.—Revision of Districts.—At the regular session of the general assembly of 1963 and each regular session next following official publication of each Federal enumeration of the population of the state, the general assembly shall immediately alter and amend the boundaries of all representative districts and of those senatorial districts within any county to which there is apportioned more than one senator to conform to the requirements of Sections 45, 46, and 47 of this Article V. After 45 days from the beginning of each such regular session, no member of the general assembly shall be entitled to or earn any compensation or receive any payments on

account of salary or expenses, and the members of any general assembly shall be ineligible for election to succeed themselves in office, until such revisions have been made. Until the completion of the terms of the representatives elected at the general election held in November of 1962 shall have expired, the apportionment of senators and representatives and the senatorial and representative districts of the general assembly shall be provided by law.

The ballot title and submission clause of the proposed initiative amendment to the constitution petitioned for herein as designated and fixed by the Secretary of State, Attorney General and Reporter of the Supreme Court is as follows, to-wit:

An act to amend Article V of the State Constitution providing for a Senate of 39 members and a House of 65 members; provides for 65 Representative Districts to be substantially equal in population: for senatorial Districts apportioning Senators as now provided by law, and one additional Senator is apportioned to Adams, Arapahoe, Boulder and Jefferson Counties; Elbert County being detached from Arapahoe County and attached to a District with adjoining Counties; provides for Senatorial Districts of substantially equal population within Counties with more than one Senator; for revision of Districts by the General Assembly in 1963 and after each Decennial Census thereafter, under penalty of loss of compensation and eligibility of members to succeed themselves in office.

III. The statutory provisions referred to in the said Amendment, Section 63-1-3, 1953 Colorado Revised Statutes, appears in Chapter 63, Article I, 1953 CRS, in Volume 3, page 728. The entire Chapter 63 is pertinent in this matter, and is appended hereto, as Appendix A.

IV. In the Session of 1963, the General Assembly did enact legislation reapportioning in pursuance of Amendment 7. That Legislation is House Bill 65, a copy of which was made an exhibit in the record herein, and which now appears as Chapter 143, Session Laws of Colorado, First Regular Session 1963, commencing at page 520, and continuing through page 532. That statute in its details was not specifically litigated, but the Court having requested information as to its statistical effect, the matters are included statistically in Appendix B hereto.

1(d). **Questions for Review:**

Two original Complaints were filed by the present Appellants and others in the United States District Court for Colorado. Plaintiffs therein, being public officials, citizens, and taxpayers, appeared for themselves and, representatively, for others similarly situate, presenting action against the General Assembly, Governor, Secretary of State, and Treasurer of Colorado, seeking injunctive and other appropriate relief with reference to legislative apportionment in Colorado.

The Lucas Complaint was filed July 9, 1962, and requested convocation of a three-judge Court. It alleged that Colorado exists under a Constitution adopted pursuant to an Enabling Act of Congress, and subject to the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States. It was alleged

that one of the inalienable rights of citizenship in the United States and State of Colorado is equality of franchise and vote, and that the concept of equal protection of the laws requires that every citizen be equally represented in the legislature of his State.

In the Memorandum Opinion, 208 F. Supp. 471, the Court recognized the unconstitutional nature of the apportionment existing under the then existing constitutional provisions and statutes, but deferred affirmative action until after elections.

In the elections of November, 1962, there was adopted Amendment 7 referred to above, and the pleadings were supplemented to raise the same substantial questions with reference to Amendment 7. In its Opinion reported in 219 F. Supp. 922, the Court, by a division of 2 to 1, held that the so-called Federal scheme adopted by the amendment, and freezing the Senate perpetually upon the same essential basis earlier found to be unconstitutional, was constitutional and valid. That denial of equal protection of the laws, as asserted, is the basis of the present appeal. Broadly, then, the questions presented, which must be viewed in the light of the factual statement below, may be summarized as follows:

1. Is the method prescribed for apportionment of the House of Representatives and the Senate of Colorado, and for determination of Representative and Senatorial districts under the above-referred Amendment No. 7, particularly with respect to the Senate, which ignores population as a basis, freezing the Senate Districts basically in accordance with a heretofore condemned scheme, and perpetually separating the districts from a population connection, in violation of the guarantees of the equal pro-

tection clause of the Fourteenth Amendment to the Constitution of the United States?

2. If the said Amendment No. 7 is found to involve a violation of the constitutional guarantees of equal protection under the Fourteenth Amendment, and in view of the fact that the pre-existing provisions of law with relation to the apportionment, districting, and election of the House of Representatives and the Senate of the State of Colorado have been heretofore held to be unconstitutional, then may there be orders entered, and if so what orders, properly to apportion the representatives and senators to be elected to the next general assembly of the State of Colorado?

3. Essentially, in view of the admitted statistical evidence, and the legislative and legal history of apportionment of Colorado, is there a rational basis for separating the Senate in Colorado from population relation, while fully recognizing that such a population must exist for the House of Representatives, and that population equality must exist in multi-member districts of the Senate?

4. Inasmuch as there has purportedly been, by House Bill 65, a reapportionment of House Districts, purporting to be on a population basis, as nearly equal as may be, can there be made by judicial act a similar apportionment of the Senate, the said apportioned House and Senate Districts to be utilized as a basis for forthcoming election, or, alternatively, can affirmative orders be made to the Defendant Assembly and officials requiring, under proper direction of the Court, the making of an immediate apportionment on an actual population basis?

1(e). Concise Statement of the Case:

1. In order to determine whether or not there is a constitutional abuse in the presently attempted structure of the Colorado General Assembly, some factual and legal history of the State must be taken into consideration. For these purposes, only those matters comprehended within the record, or clearly involved in statute, need be considered.

History of Colorado as a populated area basically begins with the gold discoveries at Boulder, Golden, and Denver, almost simultaneously, and in the year 1859. For approximately two years, legal organization was informal. Thereafter, and in 1861, there was formed a Territory of Colorado, composed of parts of the existing Territories of Kansas, Nebraska, New Mexico, and Utah.

To this entity, Congress gave effective form by an Organic Act, approved February 28, 1861. The text of that Organic Act may be found in General Laws, 8th Session Legislative Assembly, published at Central City by David C. Collier, 1870. Legislative power was vested in a Legislative Assembly, the immediate precursor of the General Assembly, and formed *wholly upon a population basis*. Section 4 of the Organic Act provides as to that body as follows:

> "Sec. 4. And be it further enacted, That the legislative power and authority of said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and a house of representatives. The council shall consist of nine members, which may be increased to thirteen, having the qualifications of voters as hereinafter pre-

scribed, whose term of service shall continue two years. The house of representatives shall consist of thirteen members, which may be increased to twenty-six, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. AN APPORTIONMENT SHALL BE MADE, AS NEARLY EQUAL AS PRACTICABLE, AMONG THE SEVERAL COUNTIES OR DISTRICTS FOR THE ELECTION OF THE COUNCIL AND HOUSE OF REPRESENTATIVES, GIVING TO EACH SECTION OF THE TERRITORY REPRESENTATION IN THE RATIO OF ITS POPULATION (INDIANS EXCEPTED) AS NEARLY AS MAY BE; and the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the territory to be taken; and the first election shall be held at such time and places and be conducted in such manner as the governor may direct; and he shall, at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. * * *"

By 1865, there had been prepared an Enabling Act, prepato y to Statehood. That act was approved by the people and by the Congress, but it was vetoed by President Johnson in 1866.

In 1875, there was a further Enabling Act approved by the Congress. That Enabling Act, which appears in Volume 1, 1953 CRS, pages 237 and following, provides

for the holding of a constitutional convention, and, in Section 3, provides that "the aforesaid representatives to form the aforesaid convention shall be apportioned among the several counties in said territory in proportion to the vote polled in each of said counties at the last general election as near as may be." Population, therefore, was again the only basic criterion, measured by voting strength.

In 1876, the State adopted a Constitution pursuant to the Enabling Act. That Constitution (General Laws Colorado, 1877, at pages 44-46), contains essentially the provisions set forth above as the sections numbered 45-47 prior to Amendment No. 7. The Senate, however, then consisted of 26 Senators, and the House of 49 Representatives, Section 48 of the Constitution fixing the original House and Senate Districts. Examination of those districts, and comparison of them with the populations as of the date of the establishment of the districts, reveals that the districting was essentially on a population basis, precisely as the Organic Act had required for the Legislative Assembly prior to Statehood. No different basis esentially existed for the Senate than for the House. Most districts were single-member districts. A few, however, had multiple members, as for example, in the Senate, Arapahoe (which then included Denver), which had 4 and 7 representatives. Several of the mountain mining counties, then heavy centers of population, also had multiple representation.

The Constitution required, in Section 45 above quoted, that "the general assembly shall provide by law for an enumeration of the inhabitants of the State in the year of our Lord 1885, and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the

authority of the United States, shall revise and adjust the apportionment for senators and representatives on the basis of such enumeration, according to ratios to be fixed by law."

The original 26 members of the senate were divided, on a population basis, among 20 Senatorial districts, from 1 to 4 members to the district, the districts consisting of from 1 to 4 counties.

The original 49 representatives were divided among the 28 counties on a population basis, only one house district consisting of two counties.

Although there was provided a State Census in 1885 and every 10 years thereafter, and required apportionment of the house and of the senate after each state census and each federal census, a mandatory reapportionment once every five (5) years, there has never been a state census made. The Constitutional provisions were regularly ignored.

Statutes adopted to apportion the State, above referred and quoted at length in Appendix A, operated upon a population basis exclusively, modified by what is called alternatively a "weighted ratio" or "differential ratio" or "multiple ratio." Under the system, each of the established districts is alloted one seat. Additional seats are allowed for additional numbers of population, or fractions of the requisite number, but the number required for additional representation is materially higher than that required for the basic representatives.

Under the existing statutes, Sections 63-1-2, 63-1-3, and 63-1-6, 1953 CRS, printed in Appendix A, the ratio

for the apportionment of the Senate is one seat for 19,000 persons, plus an additional seat for each additional 50,000 persons or fraction of 50,000 more than 48,000. A representative is allowed for the first 8,000 persons, though one county had a representative with fewer than that number of persons in 1960, and an additional seat was allowed for each additional 25,500 persons or fraction over 22,400.

It will be seen that the number required for the initial representative is very low. In the senate, the number required for the next senator is approximately 2½ times the initial requirement, and in the house approximately 3 times the initial requirement.

It was, accordingly, always very difficult for a heavily populated area to obtain any representation in any manner proportional to its population growth. There was, therefore, always a materially excessive representation of rural and mountain areas, particularly aggravated by the exodus of population from the mining areas of the mountains, and the enormous concentrations of population in Denver and the surrounding and suburban areas.

The 5-year state reapportionments, based upon the state census requirement, were wholly ignored. Essentially, Colorado has had little reapportionment. After an original reapportionment of 1881, there were only four reapportionments, those of 1901, 1913, 1933, and 1953. That of 1933 was accomplished, as will be discussed below, by iniated petition, in the face of material legislative opposition. That of 1953 was a token measure only, making essentially no change and giving substantially no recognition to the growth of the metropolitan areas.

1.1. There was admitted in evidence, without ob-

jection, and received by the Court, the United States Population Census of the State of Colorado, 1960. The basic statistical data applicable appears on page 7-10 of that Exhibit (Exhibit 1).

1.2. The following statistical allegations were made and proven, without dispute, from the Census, so admitted by stipulation into evidence:

1.21. The population of Colorado in 1960 was 1,753,947. Each of its 35 senators, therefore, should have represented 50,113 persons, and each of its 65 representatives should have represented 26,984 persons. General population of the state had increased 32.4% over 1950 population, but urban population had increased by 55.5% while rural population actually *declined* 6.6% during the decennium 1950-1960.

1.22. Population in the most populous Senate District, Jefferson County, was 127,520; that of the smallest Senate District, the 18th, was 17,481. Each citizen in that smaller district, then, was accorded representation approximately eight (8) times that accorded a citizen in the most populous of the senate districts.

1.23. In like manner, a nine-to-one discrimination obtained between the most heavily represented House district and the least heavily represented such district.

1.24. In several districts, both House and Senate, representation was allowed and existed even though there were fewer persons within such districts than the statutorily prescribed minimum for reprseentation.

1.25. 29.8% of the population of Colorado, situate

in its least populous Senatorial Districts, elected a majority of the Senate, and 32.1% of the population, in similarly unpopulated areas, elected the majority of the House of Representatives.

1.26. The larger part of the population of Colorado now lies in a north-south strip along the Eastern Slope and cordillera of the Rocky Mountains, running from Boulder in the North to Pueblo in the South. The largest part of that population is in the Denver metropolitan area, consisting of the City and County of Denver, the surrounding "Tri-County" area of Adams, Arapahoe, and Jefferson Counties, and the closely adjacent Boulder County.

The Denver Metropolitan area was grossly misrepresented or under-represented. On average, a senator from one of the seven most populous districts in the State represented 90,309 persons, very nearly twice the number of persons proper as shown in 1.21 above, while from one of the eighteen least populous districts, electing the majority of the Senate, a Senator represented on average 39,013 persons, nearly a 3 to 1 adverse differential.

In the immediate metropolitan area, Denver itself was favored over the surrounding Adams, Arapahoe, and Jefferson Counties in the ratio of 2 to 1. Similar conditions prevailed both in the House of Representatives and in the Senate.

These conditions existed under the existing statutes, which were found to be basically invalid.

1.3. No question factually was raised or has ever been raised as to the reality of this distortion, and the

Three-Judge Court unanimously, and on page 6 of its Memorandum Opinion (reported in 208 F. Supp. 471) said:

"Factual data presented at the trial reveals the existence of gross and glaring disparity in voting strength as between the several representative and senatorial districts. Colorado's present population determined by the 1960 federal census, is 1,753,947. During the decade from 1950 to 1960 there was a percentage increase amount to 32.4. During this period the urban areas increased 55.5 per cent, and there was a decrease in the rural areas amounting to 6.6 per cent. The population in 36 of the 63 counties decreased. Some specific examples of the disproportion are here mentioned: The most exaggerated example is in a district (having a single representative) which was shown to have a population of only 7,867 as compared with another representative district (having two representatives) for a population of 127,520 people. Similar disparity exists in the senatorial districts. A single senator represents a district of 127,520 people, while another senator has 17,481 people in his district. A senator from one of the seven most populous districts represents on the average 90,309 constituents; a senator from one of the eighteen least populous districts represents on the average 29,013 persons. A representative from one of the seven most populous districts represents on the average 46,342 while a representative from one of the twenty-eight less populous districts represents an average of 15,993 persons. Also noteworthy is the fact that 29.18 per cent of the 1960 population is capable of electing a majority of the Senate, and 32.1 per cent of the population is capable of electing a majority in the House of Representatives. Stated differently, it can be said that 462,741 persons elect 33 representatives, a majority, whereas 1,190,300

persons elect 32 representatives, a minority of the House. Similarly, in the Senate 556,912 voters elect 19 of the 35 senators, whereas 1,207,035 elect the remaining 16 senators.

"The inevitable effect of the present Apportionment Act has been to develop severe disparities in voting strength with the growth and shift of population. It provides that the ratio for the apportionment of senators shall be one for each senatorial district for the first 19,000 of population and one for each additional 50,000 or fraction over 48,000. The ratio fixed for the House is one representative for the first 8,000 of population and an additional representative for each additional 25,00 or fraction over 22,400 of population. The inevitable consequence of these ratios is the kind of disparity which now exists."

2. The original action instituted was tried and finally disposed of in a one-day session on August 10, 1962. The Trial Court of Three Judges rendered a unanimous per curiam opinion. That Opinion as above referred is reported in as *Lisco vs. McNichols*, 208 F. Supp. 471. There was then pending an attempt to amend the Colorado Constitution. Proponents of several amendments were in the field, one being called Amendment 7 and the other Amendment 8. It is improbable that either one would satisfactorily have corrected the situation. The parties here involved, in any case, were not and are not proponents of any amendment, but appear entirely to sustain the thesis that there is under the equal protection and due process clauses of the Fourteenth Amendment, and as an incident and corollary of the right of franchise, a right to equal and equally weighted franchise. The politics of amendments 7 and 8, so carefully considered in its final opinion

by the trial Court, are not preponderating circumstances in this appeal.

3. The Trial Court, during trial, admitted as intervenors those individuals who were the principal backers of Amendment 7. Most of the testimony put in at the trial was identical with the testimony subsequently entered before the final Opinion, to the effect that if Amendment 7 were adopted, the Senate provisions would be reasonable provisions. The Court, desipte that testimony, which does not differ in substance or in quality from the testimony upon later trial, held to the invalidity and irrationality of the existing arrangement and hence, to the invalidity of the Senate Arrangements under proposed Amendment 7, since that Amendment, by express terms, freezes the existing statute, simply adding 4 Senators, and giving one of them to each of the Counties of Adams, Arapahoe, Jefferson, and Boulder. Proponents of Amendment 7 fully participated in every stage of the trial and presented at the initial hearings full data in support of their proposed arrangement.

3.1. The Trial Court held the existing arrangements to be invalid, stating in the Memorandum Opinion:

"We recognize that a statute is presumed constitutional, and that he who attacks the constitutionality of a statute bears a heavy burden. The population statistics presented by plaintiffs and challenged by no one, show the disparities we have heretofore noted. They are of sufficient magnitude to make out a prima facie case of invidious discrimination which rebuts the presumption. Accordingly, the defendants were obliged to show that there exists some rational basis for these disparities.

"To sustain the rationality of the present districting of the Colorado General Assembly we are left with those facts which may be judicially noticed. We know that Colorado is a large state having two counties with an area of over 4,000 square miles and a number of counties of more than 2,000 square miles in size. We know that the east half of the state is a land of plains and west half a land of mountains. The population is now concentrated in the metropolitan centers of Denver, Pueblo and Colorado Springs, all located in a narrow strip east of the Continental Divide. The economic interests of the farmers and the miners, the stock raisers and the oil producers, the merchants and the consumers, the employers and the employees, industry and recreation, the mountains and the plains, the large cities and the small towns have many differences. The Colorado statutes reflect that traditionally the districting of the legislature has favored certain areas with great emphasis on mining counties which was changed, at least partially, by the 1932 initiated measure which increased the representation of the eastern farming counties. We know, too, that in the last twenty years the population has become more and more concentrated in the metropolitan areas.

"These matters of general knowledge may justify disparities in legislative districts. They do not, of themselves, sustain the rationality of the legislative districts as they now exist. Reliance on generalities is misplaced when a case must be decided on the basis of specific situations."

4. The Court deferred final action until after the then-impending November elections.

5. At the November ,1962, election, there was adopted

the so-called Amendment 7, the text of which appears above.

6. Following those elections and that adoption of Amendment 7, amendment and supplementing of the pleadings was permitted. There were filed in each of these consolidated actions Supplemental Complaints, part of the record herein, raising constitutional questions under the Fourteenth Amendment, occasioned by the adoption of Amendment 7, The Supplemental Complaint of the Appellant Lucas incorporated the allegations of the Complaint, and made parallel objections to the provisions of Amendment 7. Essentially that Amendment provides for a House of Representatives of 65 members, to be elected from districts "as nearly equal as may be", and to be decennially reapportioned, each member to be elected from a single-member district. It provides for a Senate of 39, rather than 35, members, the 4 additional members being arbitrarily assigned to Adams, Jefferson, Arapahoe, and Boulder Counties, one to each county. The other senatorial districts remain fixed in the same manner as provided by those statutes previously and in the Memorandum Opinion declared to be irrational and violative of the principles of equal protection. The Senatorial districts are perpetually frozen, regardless of population or population change. If, however, the districts are multi-member districts—most of them being single-member districts—then the multi-member districts are to be decennially reapportioned upon the basis of population. The statutes, declared void by the Memorandum Opinion, in direct contemplation of Amendment 7, is incorporated referentially in that Constitutional Amendment, and prohibited to be repealed or modified, as regards most of its salient particulars.

6.1. In the Supplemental Complaints it is alleged that

the Amendment is wholly invalid in that it accepts and recognizes the principle of equal representation as to the House of Representatives; attempts to deny the validity of that principle generally, as to the Senate, but excepts the multi-member districts in the Senate, to which is applied a rule of apportionment as nearly in accordance with population as may be. The Senate is frozen in perpetuity upon the basis of an incorporated apportionment statute declared by the Three-Judge Court unanimously to be "irrational" and without fundamental historical or other basis in fact or law. The Supplemental Complaints have urged that perpetual separation of the Senate from a connection with population is impermissible; that distinction between the single-member rural districts and the multi-member urban and metropolitan districts within the Senate provisions is totally capricious; and that, resultantly, Amendment 7 is as a whole arbitrary, capricious, and invidiously discriminatory. This is particularly urged by reason of the fact, that from the Organic Act of the Territory until 1962, Colorado has never recognized any basis for the formation of districts or for the selection of either the House or the Senate except population, and no basis other than population exists or has ever existed in Colorado for such districting or selection. Accordingly, it is urged, Amendment 7 is void, and, the pre-existing arrangement of statute being already declared void, judicial action to require proper apportionment is requisite.

6.2. Under the facts as developed from unquestioned statistics, the distinctions made in the Senate under Amendment 7 are invidious, discriminatory, and without basis in history, logic, or reason:

6.21. The least populous Senate district under the

amendment is permitted one Senator for 18,414 persons. In the most populous district, one senator represents 71,871 persons. That situation is frozen perpetually. The favored district is one which is decreasing in population and has steadily so decreased for many years. The district discriminated against is one which has gained continually in population and, being in the immediate Denver area, must continue to do so, so that the distortion, now severe, must over even a short period of time become shocking and, protracted, unconscionable.

6.22. Under Amendment 7, 460,620 persons elect 19 members of the Senate. 1,203,328 persons elect only 20 members of the Senate. Effectively, one-third (1/3) of the population controls the Senate and hence controls legislation in Colorado. There is no dispute in the evidence that such is the case, nor is it disputed that such is designed perpetually to be the case, although it is likely that the disparity will progressively increase.

6.23. Historically, the mountain and rural population of Colorado has tended continually to decline. Urban population of the Denver area and a strip of territory extending along the base of the Mountains, from Denver to Colorado Springs, has continually increased. The Amendment was intended to prevent representation of the majority of the population by a majority in the State Legislature and was purposed forever to prevent majority control of that body.

6.25. Proponents of the Amendment, and the Appellees generally, have admitted that the Amendment does not constitute or attempt to provide for apportionment in accordance with the principle of equality of representa-

tion as of right, for they argue that there is no such right. They admit that the Amendment was purposed, intended and designed to prevent representation on a population basis and to vest a controlling function perpetually in a clear minority of the population, described by the majority opinion of the trial court as representing "insular" interests, which are in this manner given and intended to be given perpetual legislative control, or at least perpetual veto right over legislation, in the State of Colorado.

7. In its Opinion above referred [219 F. Supp. 922], two members of the Trial Court have upheld these contentions, specifically holding that the "special interests" or "insular" interests of minority geographical or economic groups in Colorado are such as to justify legislative distortion and its perpetuation. The Majority Opinion holds that representation strictly in accordance with population would accord such special groups insufficient legislative voice and that, accordingly, inasmuch as majority approval of a constitutional amendment has been obtained, a Senate separated from population base is permissible.

7.1. Appellants have strongly contended that no vote of the population of a state, no matter by what majority, may abrogate the provisions of the Constitution of the United States, nor may such vote allow deprivation of any part of the citizenry or any citizen of equal protection of the laws.

7.2. As recognized in the unanimous and first Memorandum Opinion of the Trial Court, the Colorado Legislature has historically refused to follow the Constitutional obligation to apportion upon the basis of population, and such failure was itself unconstitutional. Amendment 7 was

admittedly sponsored only for the purpose of avoiding majority control in the Senate, and for the purpose of freezing the Senate effectively upon the pre-existing basis, though that basis was held unconstitutional. It is the position of the Appellant that the only representation possible under the Constitution, in a state legislative assembly, is representation of *people*. Under our constitutional scheme, there is no specific representation of "interests", whatever those may be, nor however much some may esteem them. It is contended that there cannot be a validation of an unconstitutional arrangement simply by popular sanction at the polls. The limitations of the Constitution of the United States are in their essence, it is argued, protections of the individual against the many and of the citizen against the State. Constitutional limitations are limitations upon power, and specifically upon the power of the majority to trespass beyond permitted bounds. Fundamentally, Appellants submit that the Majority Opinion below is an abdication of the principle of individual equal protection of the laws; and that the right of any single individual to equal protection of the laws, under the Constitution of the United States, and as reflected in his electoral equality transcends the economic "interests" of any group or area.

8. There is filed a Dissenting Opinion by Judge Doyle. In it he specifically points out that Plaintiffs below (here Appellants) were held in the Memorandum Opinion to have established a prima facie case of unconstitutionality against the protested measures and systems. He observes that no logical basis exists upon which to distinguish between the Senate and House of Representatives, and that the equal protection clause applies to both, there being no analogy to the Congress of the United States, as discussed by this Court in *Gray vs. Sanders*, 83 S. Ct. 801.

8.1. That dissent further urges the principle of *Simcock vs. Duffy*, 215 F. Supp. 169, that "an apportionment should not be permitted that would allow a blockage of major legislation desired by the great majority of the electors of Delaware to come to pass in the Senate. Effecting the will of the majority of the people of a State must be deemed to be the foundation of any apportionment plan." It is further urged, as concerns the validity of Amendment 7, that "the unpleasant truth is that it was particularly designed and dictated not by factual differences, but rather by political expediency. Simplicity and success at the polls overrode the considerations of fairness and justice. Thus, Amendment No. 7 fails the test of rationality in its adoption."

9. Historically, there is no evidence to support the theory written into Amendment 7. In Colorado, representation has never existed, nor apportionment been authorized to be made, prior to Amendment 7, upon any basis other than population, however flagrantly the Colorado legislature has sought to ignore that requirement.

9.1. The Majority Opinion emphasizing that it is unimportant that the distortion of the Senate is perpetual, since it points out that the Constitution may again be amended one day to correct the problem. Amendment of a Constitution is a laborious and fantastically expensive matter. The fact that an amendment, capable of accomplishment through a process which no individual could essay, might one day restore equality is meaningless to the individual voter whose vote is negatived by the present Amendment. Such argument, it is urged, is lip service only to the Fourteenth Amendment, paramount in our Constitutional scheme, rendering worthless the guarantee of individual equality under law established thereby.

9.2. The Majority Opinion argues that "insular" economic interests, specifically named in that Opinion, require the allowed 2½ to 1 majorities over interests of the majority of the people, resident in the urban areas, in order adequately to protect those "insular" interests against that majority. The Constitution of the United States does not contemplate representation of mines nor of mountains, of plains nor of cattle, nor of the rivers which water them. It contemplates only representation of people; of each one equally, whether he be a miner, farmer, grazier, urban resident.

10. Accordingly, Appellants have argued below and here again argue and submit that it has been clear since the Civil War that no State, no group of persons within a state, nor even a majority of the electorate of any State, may cast off the protections guaranteed by the Constitution of the United States to any individual citizen. Amendment 7 in this regard has no more status as law than the Acts of Nullification and Secession. It is submitted, as Appellants believe, that in *Baker vs. Carr* this Court has announced a basic element in that charter of freedoms it has so carefully engaged to formulate. The basic tendency of suffrage in the free world has been to the accomplishment of fundamental voting and political equality between individual human units. If artificialities of the kind implicit in Amendment 7 are to be upheld, then it is submitted that the entire implicates of the doctrine of individual worth and freedom promulgated by this Court are subject to subversion, not only as to the suffrage but as to any other right this Court has sought to guarantee. The majority is often quite willing to subvert the right of the individual. The entire notion of civil right is that

it legally may not so do. For these reasons it has been urged that Amendment 7 is void.

SUMMARY OF ARGUMENT

The legal argument of the Appellants may be summarized as follows:

1. Citizenship in the United States and in the State of Colorado carries, as one of its basic and inalienable rights, equality of franchise and of vote. Such equality is implicit in the entire electoral history of the United States and in the judicial pronouncements under the Fourteenth Amendment.

2. As a corrollary of the above, equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, applied to representation in State legislatures, requires that each citizen be represented as equally as practicably may be in the legislature of his State. If his vote must be equal, it can be so only if it have equal representational effect.

3. Challenged Amendment No. 7 recognizes the requirement of equality as regards the House of Representatives. House Bill No. 65, as demonstrated by the series of appended Exhibits, parts of the Brief of the Amicus Curiae below, demonstrates that little impracticality results from an attempt to establish electoral equality. Amendment 7 categorically rejects the principle of equality in the Senate, insofar as concerns the rural and minority single-member constituencies. These are frozen, and given perpetual control of the Senate, though admittedly based on an unconstitutional State Statute. The

population principle is accepted within the multi-member constituencies in the urban areas. Future amendment of Senate districts is prohibited, but strict population distribution within the multi-member districts is enjoined.

4. No rational basis exists for the distinction made between the House of Representatives and the Senate as regards the requirement of equality of representation based on population, and no rational basis exists for the differentia made between single-member rural districts and multi-member urban districts.

5. There is no historical parallel between Colorado Counties and the original States, nor between the state House and Senate and the House and Senate of the United States, such as to justify a difference in basis of selection between the House of Representatives and the Senate of Colorado.

6. Historically, there exists and has existed prior to Amendment 7 no basis for apportionment in Colorado other than population.

7. There has been clear judicial declaration that the statutes, frozen in effect as to the Senate by Amendment No. 7, are themselves without rational basis and unconstitutional as violative of the Fourteenth Amendment.

8. The clear purpose of Amendment 7 was to create a second chamber of the General Assembly, separated from population foundation and frozen in composition, having capacity of perpetual veto over any act of legislation which might be favored by the urban and suburban majority of the Colorado population, in order to offset entirely the lip service given population in the House of

Representatives. Amendment 7 is a deliberate and purposed subversion of the principles of equal protection of the laws and equality of suffrage. As observed by the dissenting Judge below, "the unpleasant truth is that it was particularly designed and dictated not by factual differences, but rather by political expediency. Simplicity and success at the polls overrode the considerations of fairness and justice. Thus, Amendment No. 7 fails the test of rationality in its adoption."

9. The fact that Amendment 7 took the form of a constitutional amendment sanctioned by the majority casting votes at the election in which it is adopted gives it no validity whatsoever. The problems here involved, involve the Constitution of the United States, the Fourteenth Amendment, and equal protection of the laws. That Amendment derives from the Civil War. It was designed to prevent rampant majorities depriving minorities or individuals of basic rights. Constitutional guarantees are limitations upon majorities of the electorate as well as upon governments. Whatever considerations or means may have induced persons voting in Colorado to sanction Amendment 7, those persons so voting cannot, no matter how many they be, limit rights guaranteed under the Constitution of the United States, nor can that supposed voter sanction justify the clear half-century abuse by the Colorado Legislature of its statutory and constitutional duty.

10. Tremendously serious damage results, both to individuals and publicly, because of distortions in legislative representation such as that transpiring in Colorado. The individual is of course damaged, since he is in point of personal dignity and right demeaned below others,

sometimes overwhelmingly, simply by virtue of residence in an urban or suburban areas, as contrasted with a rural one. Indeed, in the present action, one of the principal witnesses for the Defendants and Intervenors specifically stated that rural people were better people than those living in the cities or suburbs and deserved, accordingly, governmental preponderance. Beyond this, the state legislative process itself obviously deteriorates during any such process, since those persons who preponderantly contribute financially to the State government are more and more completely separated from the benefits of their contributions. If there be a legislative bifurcation, such as attempted in the Colorado scheme, whereby the Senate is given effectively a rural veto power, then there is the sad process of legislative stalemate, or of total disagreement between legislative and executive arms of government, the executive in such case being generally elected from and by the majority, denied representation in the legislature. So frustrating does this become and so inefficient in governmental point of view, that major functions of the State are of necessity neglected, leading to a deteriorating federal system and an unreasonable preponderance of the Federal Government in local affairs, accomplished by default of the local instituitons themselves which, disassociated from reality, seeking to protect "insularity" of interest, as advocated in the Majority Opinion, must fundamentally cease when separated from the needs of the majority effectively to govern at all. Significant as our Federal Government is, it is a tragic thing that federalism may be destroyed by non-representative composition of the State legislative bodies.

11. No need exists for the distortion involved, since there can readily be made an apportionment of both

houses, fulfilling every proper requirement of territorial and population representations, with but little effort.

ARGUMENT

Argument has been had, upon extensive briefs and briefs of amici curiae, filed heretofore in Numbers 20, 29, 23, 27, 41, and 69, October Term, 1963, which, aggregately, present many of the questions fundamentally underlying consideration of the Colorado cases. In the Briefs in those matters have been presented much of the matter which in other circumstances would have comprised the bulk of this presentation. Particularly in the Amicus Curiae Brief submitted on behalf of American Jewish Congress, American Civil Liberties Union, and NAACP Legal Defense and Educational Fund, Inc., there is presented much of the general case law and historical background apparently pertinent to the consideration of these questions.

Because those matters have been extensively before the Court quite recently, we will not here repeat in detail, but will endeavor to confine ourselves to a general outline of certain of the propositions in those other matters detailed, and to particular reference to the Colorado problem. That problem, we submit, presents in clearcut and inescapable form the basic question whether equal protection of the laws does indeed include true equality of franchise, and whether state electoral majorities may vitiate the guarantees of the United States Constitution.

We believe and submit that the questions of franchise, with the segregation decisions, raise the most significant civil liberties questions to be presented to this Court and nation since the Civil War, and submit that the impli-

cations of all constitutional decisions culminate in a recognition of the basic integrity of the individual citizen; of the necessity for its rigid protection by constitutional mandate; of the logical imperative of the proposition "one man, one vote" as fundamental to the whole of the fabric.

A. EQUALITY OF FRANCHISE AND OF VOTE IS IMPLICIT IN THE ELECTORAL HISTORY OF THE UNITED STATES, AND CORRELATIVELY EQUAL PROTECTION OF THE LAWS, APPLIED TO LEGISLATIVE REPRESENTATION, LEADS ESSENTIALLY TO THE THESIS "ONE VOTER, ONE VOTE".

Franchise is an evolving process, intimately connected with the democratic process and with the constitutional theory of civil right as an area of inviolable personal sanctity, whether against incursion by other individuals, massed individuals, or the state itself. Currently, numerous proceedings are in progress in the Courts of the United States and before this Court to determine in essence whether real equality of franchise is essentially involved in equal protection of the laws. Impetus has been given the process by the massing of population in large urban centers, by constant decrease in the importance of the rural areas of the United States in point of population, while those same areas remain politically dominant in state legislative bodies by reason of perpetuated representation out of proportion to present populations.

These problems, while currently most pressing, are not without historic parallel. They result inevitably from change in population focus and modes of existence. The earliest

such problems arose in this country in Virginia, shortly after the Revolution, by reason of the shift in population from the tidewater areas and cities into the Piedmont and plantation areas. Reform was eventually accomplished, leading to a rural-based legislature, which renewed population change and passage of time has now outmoded, as shown in *Mann cs. Davis*, an action in which on November 28, 1962, the 3-judge court assembled at Alexandria declared the existing Virginia apportionment inoperable and void, and leading to No. 69, October Term, 1963, now before this Court.

When, following the Revolution, migration from coastal colonies and states led to settlement of the old Northwest Territory, settlement was almost entirely agricultural. Cities did not become prevalent in our present mid-continent until the middle of the 19th Century, immediately prior to and immediately following the Civil War. Accordingly, legislative representation was primarily granted to rural counties, remained logical in a sense even up to World War I, when Rural America was in fact typical of the United States, and has become entirely an archaism in present day metropolitan America.

In Colorado, population was initially localized in mining areas, and subsequently spread to the plains with the growth of importance of cattle ranching and the growing of wheat. Population has long passed from the mining counties. Wheat and cattle are but secondary aspects of the State economy. Two-thirds of the population of the State resides in the 7 urbanized counties, and most of that in the immediate vicinity Denver, Colorado Springs, and Pueblo, in a long, thin, inhabited chain of land along the east slope of the mountains, one of the thirty great metro-

politan centers into which American population is rapidly being agglomerated.

Because for a period, described by Mr. Steffens and the "muckrakers", the exuberant economics of the city led to certain moralistic abuse, opponents of rational suffrage have argued that the city is "wicked and corrupt" and that suffrage must be more emphatically granted the "purer" rural areas. We shall in this brief but little refer to the oral testimony of the Intervenors' witnesses, for it has but little pertinence to any matter before the Court. We do note, however, that a principal witness, Dean Rogers, specifically advocates in this case the thesis of weighted votes for the rural voter who is a "better" person than his city neighbor, a questionable thesis, and certainly one not constitutionally acceptable. Peonage of the city to the rural areas was sought to be justified for many years on the thesis that the mores and customs of the city were in some manner alien, and those of the rural area more uniquely "American" in content. When, however, nearly 70% of the population of the country is urban, and when within a decade that proportion will have risen to 90%, it would appear that it is the rural mores, if they be deviant from those of the city, which are non-representative.

Following World War II, it became manifest that no argument denigrating the importance of the Urban area could be sustained. 30 metropolitan centers contain three-quarters of our population. Demographers estimate that by 1970, 90% of the population will dwell in those same areas. Of those areas, the Denver metropolitan area is a principal one.

History manifests the fact that as areas cease to have

economic and functional importance, either in an absolute or a relative sense, there is a tendency to plead that their status must be preserved upon some "historical" grounds.

England, as well as the United States, has been faced with the problem of representational reform. In the 1830's, events culminated in the Great Reform Bill, extirpating representation of the "rotten boroughs" or "pocket boroughs", which were but once-flourishing areas from which population had withdrawn, and whose representatives sat in Parliament for comparatively minute numbers of persons, Old Sarum constituting a constituency with a member for three inhabitants only, while such cities as Birmingham, Manchester, and most of the centers of the industrial "Black Country" and Midlands remained without representation and effectively disenfranchised. Sarum was once a seaport, from which the sea withdrew; it was a cathedral city, which gave its name to a liturgical rite; but by 1830 it was but an historical anachronism, which might not claim representation when its population had gone and nought but its history remained. Representatives stand for people and not for history. Legislators assembled do not stand for geographical areas as such, nor economic interest as such, nor historic remembrance, as remembrance only. Legislators represent only *people*. When the people have gone, their representation must cease, and where they have gone, that representation must follow.

If "rural America" no longer typifies the United States, and most clearly it does not, then conversely the problems of the United States and of most of its states are primarily metropolitan problems, and those who must cope with such problems must be representative of the

population, predominantly metropolitan in its locus and approach. The thesis that dominance must continue from the former great mining areas, from the cattle regions of the plains and the market town in the counties, is a thesis which, emotionally appealing though it may be to some, we respectfully submit is without maintainable constitutional foundation.

B. HISTORICALLY THERE EXISTS AND HAS EXISTED IN COLORADO NO BASIS FOR LEGISLATIVE REPRESENTATION OTHER THAN POPULATION.

Prior to the purported adoption in November, 1962, of Amendment 7, Colorado has never had basis for legislative apportionment and representation other than a population basis.

As stated above in the Statement of the Case, Colorado history practically dates from discovery of gold at Boulder, Golden, and Auraria (now Denver), in 1859. After two years of informal government, Colorado became in 1861 a Territory, under an Organic Act, approved February 28, 1861, and providing for a "legislative assembly", comprised of two houses, a council and a house of representatives, consisting of 9 members and 13 members respectively. For their election it was required that "an apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and house of representatives, *giving to each section of the territory representation in the ratio of its population (Indians excepted) as nearly as may be.*"

During the entire territorial period, representation

was wholly on a straight population basis, in *each house* of the assembly and no variation between the houses was sanctioned.

In 1875, there was approved an Enabling Act, providing for a constitutional convention, and requiring that its representatives "shall be apportioned among the several counties in said territory in proportion to the vote polled in each of said counties at the last general election as near as may be", so that population again was the only guiding consideration.

In 1876, the State adopted a Constitution, pursuant to that Enabling Act, which also required the State to recognize the 14th Amendment and its principal of equal protection of the laws. Its provisions called for a Senate of 26 members and a house of 49 members, and its sections specifically divided the state into districts for the election of members of the house and of the Senate. Examination of those original districts demonstrates them to have been in essence the old council and representative districts under the Territorial Organic Act, based on population and nothing else. Most of the districts established were single-member districts. A few districts, the more populous, had multiple members. The 26 members of the Senate were divided on population basis among 20 senatorial districts, having from 1 to 4 members per district, and each district comprising from 1 to 4 counties. The original 49 representatives were distributed among 28 counties on a population basis, only one district consisting of two counties.

Section 45 of Article V of the Constitution, obtaining from its adoption until 1962, provided that "the general assembly shall provide by law for an enumeration of the

inhabitants of the State in the year of our Lord 1885, and every tenth year thereafter; and at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for senators and representatives on the basis of such enumeration, according to ratios to be fixed by law."

The State census required was never taken, and the constitutional provisions on apportionment were regularly ignored by the rural dominated Assembly.

No standard for apportionment existed except a population standard, but it was a badly juggled one. Under the existing statutes, frozen perpetually into being by Amendment 7, the ratio for apportionment of the Senate was one seat for 19,000 persons, plus an additional seat for each additional 50,000 persons or fraction of 50,000 more than 48,000. Similarly, one representative was allowed for the first 8,000 persons and an additional one for each additional 25,500 persons or fraction over 22,400. Some districts were allowed Senate and House representation without even the minimum population. The initial requirement was low, and incremental requirements very high proportionally, resulting in little change as population of the urban areas increased. Populated regions could not obtain representation in any manner proportional to population growth, and rural and mountain areas were always, as compared to the populated areas, over-represented.

Not only so, but the State has had little apportionment, there being only four reapportionments of meaning after the original reapportionment of 1881, being in 1901, 1913, 1933, and 1953 respectively. In 1933, the urban areas

were ignored, in favor of the wheat and cattle regions, which obtained much of the representation which had formerly gone to the mining areas. In 1933, moreover, the reapportionment was accomplished only in the face of the legislature, through initiated act and Court declaration, and not because of the legislature. In 1953, the measure was of token significance only, making few changes, and giving no recognition of moment to the growth either of the urban area or the surrounding suburbs.

Armstrong vs. Mitten, et al., 95 Colo. 425, 37 P.2d 757, is the leading Colorado decision on apportionment. On July 2, 1934, the Colorado Supreme Court voided Chapter 156, Session Laws of 1933, as violative of Article V, Section 45, of the State Constitution. A census was taken under Federal auspices in 1930. In 1931, the Assembly did nothing to reapportion, and in 1932 an initiated measure was popularly adopted. In 1933, the Assembly enacted the voided act, differing widely in the method of apportionment from the initiated act.

The Colorado Supreme Court recognized, on page 428 of its official report, that population is the basis of representation in Colorado: "The legislative act attempts to confer upon some districts a representation that is greater, and upon others a representation that is less, than they are *entitled to* under the Constitution." The words "entitled to" indicated as patently as words may do a vestiture of right. The right is vested, the entitlement is based, on *population* of the subject area at the time of the pertinent apportionment, and on nothing else.

The Court specifically remarked that Denver was entitled to 8 Senators, but received only 7, and noted that

Rio Grande, Saguache, and Mineral counties are grouped together representatively, "and although their combined population is less than 17,000, the District is given one senator, although it would require the addition of at least one more county to give it a population to entitle the district to one senator."

We have noted, as has the Trial Court in its initial Memorandum Opinion quoted above, that this kind of distortion, representation with below minimum population, continues to obtain both in the Colorado House and Senate.

The Colorado Supreme Court thus recognized that representation in Colorado was not upon any "historical" basis. It was, even in the 'thirties, recognized to be on the basis of population alone, the criticism being that the outlawed district did not have "*population sufficient to entitle the district to one senator.*" Similar criticisms were made of the House. The Court declared the Act of the legislature void because "it is so honeycombed with unconstitutional provisions as to render it void."

The Court further stated: "The people, by section 45, supra, command the general assembly to revise and adjust the apportionment at the session next following the census. The command is clear and explicit and the people, in inserting it in the Constitution, intended that it should be obeyed. A census was taken in 1920 and another in 1930; but the general assembly, although it met in 1921, 1932, 1925, 1927, 1929, and 1931, failed at those sessions to obey that constitutional mandate. Because of that neglect, the people in 1932 took the matter into their own hands and adopted the initiated reapportionment act. It was not until the people had acted that the general assembly attempted

to perform its duty with the result already shown in this opinion."

There were again censuses in 1940, 1950, and 1960 The General Assembly was in session in almost every year between them. It did nothing, in effect, to reapportion.

The Trial Court, in its initial Memorandum Opinion, stated: "The record discloses that since Colorado first achieved statehood there has been a modicum of apportionment, either real or purported, and also that there have been several abortive attempts. Since 1876 the General Assembly has been reapportioned, or redistricted, five times: in 1881, 1901, 1913, 1932 and 1953. The 1953 statutes are now in effect. Measures were introduced in the last General Assembly to reapportion with reference to the 1960 federal census report. These measures failed to pass. One initiated reapportionment act has been passed during the period since 1876. This measure was adopted in 1932, but following its adoption the General Assembly passed its own legislative reapportionment act in 1933 which was designed to thwart the initiated act. This latter act was held by the Colorado Court to be unconstitutional."

The Court therefore adjudged the entire Colorado situation to be unconstitutional, and deferred action further pending election. As the General Assembly tried to thwart constitutional reapportionment in the 'thirties, the cattle and mining and rural interests, by using the politically attractive bait of separate constituencies in the multi-member districts, sought to thwart reapportionment at the hands of the Courts, and to deny the population principal by enacting Amendment 7 in the face of Colorado legislative history.

C. THE RECENT DECISIONS OF THIS COURT BRING EQUALITY OF REPRESENTATION WITHIN THE PROTECTIONS OF THE FOURTEENTH AMENDMENT.

A new dimension of reality was added to the matter of state legislative apportionment and representation by decision rendered by this Court in *Baker vs. Carr*, 369 U.S. 204, 82 S. Ct. 703, when it became apparent that a situation such as that extant in Colorado was offensive not only to the express provisions of the Constitution of Colorado, but in circumstances such as indicated, persons in under-represented areas were denied the equal protection of the laws afforded them by the Fourteenth Amendment to the Constitution of the United States, "BY VIRTUE OF DEBASEMENT OF THEIR VOTES."

If debasement of the vote is a denial of equal protection, then there must be a "base" or unit for the vote. If one vote can be "debased" below another, then it follows that votes must be equal in effect. If so, there correlatively follows the principle "one man, one vote."

In *Baker vs. Carr*, this Court held: "In the light of the District Court's treatment of the case, we hold today only (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to relief, and (c) because appellees raise the issue before this Court, that the appellants have standing to challenge the Tennessee Apportionment statutes. Beyond noting that we have no cause at this stage to doubt that the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what

remedy would be most appropriate if appellants prevail at the trial."

Following the Judicia of *Baker vs. Carr*, relief was sought from the Colorado Supreme Court in *Stein etc. vs. The General Assembly, etc.*, ... Colo. ...., 374 P.2d 66 (No. 20240, July 6, 1962). The Colorado Court agreed that it had jurisdiction, stating: "From all that appears, both in the petition and the memorandum brief of petitioners, the parties are entitled to call these matters to the attention of the court. In at least a half dozen cases, commencing with *Baker vs. Carr*, 369 U.S. 186, 82 S. Ct. 691, 7 L.Ed. 2d 663, the Supreme Court of the United States has made this plain."

Unfortunately, the Colorado Court literally avoided deciding any issue, and ignored the problem of the Fourteenth Amendment, discussing instead its concept of the precise time when the General Assembly, which had not acted for some thirty years, would be required to act.

Justices Moore and Frantz vigorously dissented, pointing out that "it is fundamental that the duty of this Court is to uphold the constitution of both Colorado and the United States. It is equally fundamental that a statute shown to be in violation of either constitution, such a statute is void, and this court has the duty to so declare."

It is interesting to note that the dissent was written with the possibility of Amendment 7 fully in view, for its supporters intervened in the Stein Case and argued their prospective position fully to the Court.

Because of the failure of the Colorado Court to act, Messrs. Myrick et al., including present Appellants, insti-

tuted actions before the United States District Court. Supporters of Amendment 7 intervened, claiming absence of jurisdiction among other things. In the Memorandum Opinion, 208 F. Supp. 471, the District Court disposed of the jurisdictional contentions, and made those extensive findings hereinabove quoted. The Trial Court then held the existing Colorado statutes unconstitutional, saying in the Per Curiam Opinion (at pages 8-10):

"We recognize that a statute is presumed constitutional, and that he who attacks the constitutionality of a statute bears a heavy burden. The population statistics presented by plaintiffs and challenged by no one, show the disparities we have heretofore noted. They are of sufficient magnitude to make out a prima facie case of invidious discrimination which rebuts the presumption. Accordingly, the defendants were obliged to show that there exists some rational basis for these disparities.

"To sustain the rationality of the present districting of the Colorado General Assembly we are left with those facts which may be judicially noticed. We know that Colorado is a large state having two counties with an area of over 4,000 square miles and a number of counties of more than 2,000 square miles in size. We know that the east half of the state is a land of plains and the west half a land of mountains. The population is now concentrated in the metropolitan centers of Denver, Pueblo, and Colorado Springs, all located in a narrow strip east of the Continental Divide. The economic interests of the farmers and the miners, the stock raisers and the oil producers, the merchants and the consumers, the employers and the employees, industry and recreation, the mountains and the plains, the large cities and the small towns have many

differences. The Colorado statutes reflect that traditionally the districting of the legislature has favored certain areas with a great emphasis on mining counties which was changed, at least partially, by the 1932 initiated measure which increased the representation of the eastern farming counties. We know, too, that in the last twenty years the population has become more and more concentrated in the metropolitan areas.

"These matters of general knowledge may justify disparities in legislative districts. They do not, of themselves, sustain the rationality of the legislative districts as they now exist. Reliance on generalities is misplaced when a case must be decided on the basis of specific situations."

The pre-trial Order of the Court continued in effect the previous evidence and made part of the record all of these proceedings. A prima facie case had been held to be established. The defense produced no further case than at the first trial. Its only addition was a massive study, Exhibit D, which its authors, certain persons at the University of Denver, specifically testified was not intended to justify any particular pattern of legislative representation, but which was simply an economic study of the State. Each witness testified he could not find any particular pattern in the existing legislative districts. Yet they were adopted by Amendment 7, frozen in perpetuity, and suddenly transmogrified in the minds of the majority of the Trial Court from the "irrational" to the "rational". No one has explained their basis, except necessity of protection of "insular" economic interests. Only the explanation of the dissent is possible: "The unpleasant truth is that it was particularly designed and dictated not by factual differences but by political expediency. Simplicity and

success at the polls overrode the considerations of fairness and justice. Thus Amendment No. 7 fails the test of rationality in its adoption."

Since the initial decision of the Trial Court, and prior to its final opinion, this Court decided *Gray vs. Sanders*, 83 S. Ct. 801. (March 18, 1963). That action involved validity, as applied to party primaries, of the Georgia County Unit system. However, in point of legal principle, it is difficult to apprehend the difference between application in such a case and at bar with the basic principles which seem of underlying importance.

The trial court found with respect to the county unit system that under Georgia statutes, "the vote of each citizen counts for less and less as the population of the county of his residence increases." It therefore held the acts void, holding that differentiation is irrational when there is a greater differentiation than obtains in the electoral college of the United States. This Court agreed, except that it considered even this allowance of differentiation too broad.

Similarly, in the Colorado Senate, the vote of each citizen counts for less and less as the county of his residence increases. Representation of that county is frozen forever. The smaller counties grow fewer and the importance of each vote rises as the larger counties grow larger and the importance of each voter falls. Control of the Senate remains, is intended to remain, and must remain in an ever smaller number of persons, who are vested with perpetual legislative veto.

At page 805 of its opinion, this Court once and we think finally stated the right of the voter to sue: "We also

agree that appellee, like any person whose right to vote is impaired . . . has standing to sue." The Court points out that the matter is not political, and is justiciable.

In the substantively critical holding, and at page 808 of its opinion, this Court states:

> "The Fifteenth Amendment prohibits a State from denying or abridging a Negro's right to vote. The Nineteenth Amendment does the same for women. If a State in a statewide election weighted the male vote more heavily than the female vote or the white vote more heavily than the Negro vote, none could successfully contend that the discrimination was allowable . . . *How then can one person be given twice or 10 times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural County?* ONCE THE GEOGRAPHICAL UNIT FOR WHICH A REPRESENTATIVE IS TO BE CHOSEN IS DESIGNATED, ALL WHO PARTICIPATE IN THE ELECTION ARE TO HAVE AN EQUAL VOTE — whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions. [Emphasis supplied].

"The Court has consistently recognized that all qualified voters have a constitutionally protected right to 'cast their ballots and have them counted at Congressional elections.' . . . Every voter's vote is entitled to be counted once. It must be correctly counted and reported. As stated in *United States vs. Mosley*, 238 U.S. 383, 386, 35 S.Ct. 904, 905, 59 L.Ed. 1355, 'the right to have one's vote counted' has the same dignity as 'the right to put a ballot in a box.' It can be protected from the diluting effect of illegal ballots. . . . And these rights must be recognized in any preliminary election that in fact determines the true weight a vote will have . . . The concept of political equality in the voting booth contained in the Fifteenth Amendment extends to all phases of state elections . . . and, as previously noted, *there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State.* [Emphasis supplied].

"The only weighting of votes sanctioned by the Constitution concerns matters of representation, such as the allocation of Senators irrespective of population and the use of the electoral college in the choice of a President. Yet when Senators are chosen, the Seventeenth Amendment states the choice must be made 'by the people.' Minors, felons, and other classes may be excluded. . . . But once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded. As we stated in *Gomillion vs. Lightfoot*, supra, 364 U.S. p. 347, 81 S.Ct. p. 130: 'When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial re-

view. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.'

"The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing — ONE PERSON, ONE VOTE." [Emphasis supplied].

We have no capacity to state these propositions more succinctly nor more cogently than this Court has above stated them. If the Constitution gives no indication that homesite affords permissible basis for distinguishing between voters; if equality of voting power is required; if the ruling conception is, as stated, One Person, One Vote; if representation is a representation of people in a State legislature, then, since our whole constitutional history is one of expansion and equalization of franchise and representation, a regressive and irrational measure such as challenged Amendment 7, which neither expands nor equalizes, but contracts representation and freezes and perpetuates disparity, cannot stand and must be void.

D. THERE IS NO HISTORIC PARALLEL BETWEEN COLORADO COUNTIES AND THE ORIGINAL STATES, NO BASIS FOR A FEDERAL PARALLEL, NO BASIS FOR A DIFFERENCE IN BASIS OF SELECTION BETWEEN THE HOUSE AND SENATE.

Reference is sometimes made to plans such as the plan set forth by Amendment 7 as a "Little federal" plan, attempting by this nomenclature to fortify the representational differentiation of house and senate. No basis for

such a difference exists. In Colorado, as we have shown above, no basis other than population ever existed, and the two houses of the assembly, from territorial period onward, differed from one another only in length of term and number of members, not in basis of selection, which was always territorial, predicated only on population.

Sometimes, also, appeal is made to an assumed analogy with the Electoral College.

Historically, of course, such analogies are not cogent. House and Senate of the United States are differently elected because the union was one of sovereign States, and the *State* is the basis of representation in the Senate, rather than its *population*. In no individual State is such an analogy applicable, for no state is a union of its counties.

Colorado particularly holds this analogy inapposite, since its counties are mere administrative arms of the state, changeable by it at will. In *Dixon vs. People*, 53 Colo. 527, 127 Pac. 930, the Colorado Supreme Court held that a county is an involuntary political and civil division of the territory of the state, created to aid in administration of governmental affairs, and is a quasi corporation for orderly government within the scope of its authority. It is merely a governmental agency or political subdivision of the State, exercising some functions of State government, as held in *Colorado Investment and Realty Co. vs. Riverview Drainage Dist.*, 83 Colo. 468, 266 Pac. 501, and in *Gamewell vs. Strumpler*, 84 Colo. 459, 271 Pac. 180.

Even our home-rule cities have no such independent governmental status. As stated in *Denver vs. Sweet*, 138

Colo. 41, 329 P.2d 441, discussing the powers of the City and County of Denver, the Colorado Court stated: "The United States Constitution provides for a national government with a federal system of *states*. All powers not expressly granted the federal government are reserved to the *states or to the people*. United States Constitution, Tenth Amendment. Colorado's Enabling Act, approved by the federal government when we acquired statehood, insured that our state will have a republican form of government. Enabling Act, Article 4. Clearly our federal system does not envisage as a part thereof city-states. It therefore follows that home rule cities can be only an arm or branch of the state with delegated power. That is the kind of power granted by Article XX." [Emphasis by the Court].

It is specifically clear from the Colorado Constitution that the General Assembly may change, alter the boundaries of, consolidate, or even abolish a county. Presumably, however, under Amendment 7, there could never be elimination of a Senatorial District, founded on the arbitrary adoption of an admittedly unconstitutional statute as a part of the Constitution. By Amendment 7, the Senatorial District, even though the County, which comprises it may be dissolved, is given a kind of apotheosis into perpetual glory.

In *Gray vs. Sanders*, referred to above, at page 897, this Court recognizes that the federal analogies are not apposite: "We think the analogies to the electoral college, to districting and redistricting, and to other phases of the problems of representation in state or federal legislatures or conventions are inapposite. The inclusion of the electoral college in the Constitution as the result of specific

historical concerns validated the collegiate principles despite its inherent numerical inequality, but implied nothing about the use of an analogous system by a state in a statewide election. *No such specific accommodation of the latter was ever undertaken, and therefore no validation of its numerical inequality ensued. . . .*" [Emphasis supplied].

Similarly in Colorado no attempt to actually distribute the Senate on a geographical basis or an historical basis is made by Amendment 7. All that amendment does is take the *ad hoc* division, resulting in 1953 Statutes through the utterly chaotic process of legislative abuse described in the historic sections above, and perpetuate this void statute as a constitutional provision, after adding four seats, arbitrarily distributed. No specific accommodation to the claimed historical or geographical principle having been attempted to be made, and the Senate basis selected having admittedly no relation to history or to geography but only to the end result of legislative chaos and constitutional abuse, no validation of the distribution accomplished by Amendment 7 in the Senate can possibly be given by any hypothesized federal analogy.

E. AMENDMENT 7 IS IN NO MANNER PROTECTED BECAUSE IT WAS ADOPTED BY POPULAR VOTE.

In the motions to dismiss or affirm filed herein by the Appellees, as well as in the Court below, it was argued that some peculiar sanctity inheres in Amendment 7 because it was adopted by popular vote. It is even so argued in the Majority Opinion below.

We sincerely submit that such an argument cannot

have cogency. Constitutional right under the Fourteenth Amendment of any individual, in any state, is a right guaranteed by the Constitution of the United States and the institutions of the United States, and cannot be put aside by any state by popular vote, no matter how heavy. It is perfectly possible to assert that racial segregation would almost undoubtedly be approved by popular vote in many areas, were it submitted to that process, but its validity under the Fourteenth Amendment would be no whit strengthened by that approval. In like manner, no popular vote may take from any citizen his constitutional right of equal suffrage.

Colorado was required by the Enabling Act permitting it to enter the Union to adopt a Constitution specifically including the rights guaranteed by the Fourteenth Amendment. When any provision of any State Constitution, adopted by no matter how large a majority of the citizens of the State, trespasses upon an area protected by the Fourteenth Amendment, it is the provision of the State Constitution and not of the Amendment that is void.

The Colorado Supreme Court has repeatedly stricken provisions of State Law as violative of that Amendment to the United States Constitution. In *People vs. Western Union Telegraph Company*, 70 Colo. 90, 198 Pac. 146, and *People vs. Max*, 70 Colo. 100, 198 Pac. 150, it voided a Colorado Constitutional Amendment, popularly adopted, on that very ground. The Amendment rejected purported to prohibit trial judges from passing on constitutionality of challenged legislative enactments. The Colorado Supreme Court held not only that a judge might do so, but that he must, and any purported limitation placed by the State Constitution on his power so to do violated the Constitution of the United States.

"What the whole people of a state are powerless to do directly, either by statute or constitution, i.e., set aside the Constitution of the United States, they are equally powerless to do indirectly, either by a pretended authority granted to a municipality, *or by a popular election*, under the guise of a recall. [Emphasis supplied]. The original Constitution of Colorado was a solemn compact between the States and Federal government, a compact which stipulated that it should never be altered save in the manner therein provided, and that all amendments and all revisions thereof would conform to the supreme law. The whole people of the state have no power to alter it save in accordance with their contract. *They cannot do so, even by unanimous consent, if such alteration violates the Constitution of the United States.* [Emphasis supplied]. Should they make the attempt their courts are bound by the mandate of the Federal Constitution, and by the oath they have taken in conformity therewith and with their own Constitution, to declare such attempt futile, to disregard such violations of the supreme compact and decline to enforce it. There is no sovereignty in a state to set at naught the Constitution of the Union and no power in the people to command their courts to do so. That issue was finally settled at Apppomattox."

Many other authorities to the point above made could be cited. However, when the supreme judicial authority in Colorado has pointed out this limitation upon the people of Colorado even in changing their own Constitution, when the problem here involved is simply whether a majority of the electors at a particular election can set aside the principle of equal protection of the laws, guaranteed by

the Fourteenth Amendment, as respects election of the State Legislature, it can scarcely be contended with conscience or with conviction that constitutionality of Amendment 7 is one whit affected by the fact or the extent of popular approval given its offending provisions.

Amendment Number 7 was cleverly merchandised. It was astutely compounded, in order to afford to many persons desiderata in no way connected with the basic constitutional problem of equality of vote. Nonetheless, the device was calculated to set at naught the equality of the franchise and to vest legislative control, or at the very lease absolute legislative veto, in a minority of Colorado's people, and in its "insular" economic interests.

It was successfully merchandised, but then there is substantial and venerable historical parallel for the transference of birthrights in exchange for pottage. The promotion of the Amendment was expert, but its purpose was wrong; its effects, illegal; and no sanctity inheres in the majority vote of people to deprive other people of their vested constitutional right to vote and be represented as people, not as units in an "insular" interest. The fact and existence of the franchise, of its equality and vestiture in every citizens, is quite beyond the power of any majority of people in any state to change. An amendment based in such manner must be void.

F. THE SITUATION PRESENTED BY COLORADO APPORTIONMENT TYPIFIES THE EVILS NECESSARY TO BE REMEDIED THROUGH APPLICATION OF THE DOCTRINES OF VOTER EQUALITY HERETOFORE ANNOUNCED BY THIS COURT.

Other cases involving similar questions of state legislative apportionment have been heretofore argued before this Court, and the abuses inherent in distorted legislative systems have been carefully detailed to the Court. We do not wish unreasonably to repeat what has before been said so ably. Several basic considerations do occur as worthwhile again representing to the Court:

1. Discrimination clearly arises out of unequal legislative apportionment, in its nature gross and arbitrary. That discrimination is, however euphemistically worded, directed against suburban and urban centers and in favor of rural areas. There is nothing either inherently good in rural areas nor inherently evil in urban ones. Discrimination between them is unjustified. If permitted at all, time must serve to intensify its effects and its distortions. Population in the United States is and for half a century increasingly has been an urban and suburban function. Vote of the majority of the American people may not be diluted on the basis that that majority lives in and around the great cities. That distortion results in an arbitrary political patterning, a kind of gerrymander and crazy-quilt distribution of voting power, which the Majority Opinion can justify only as a protection of "insular interests", and which reality must characterize as a sanctioned vesting of minority economic interests with the prerogatives of majority popular control.

Representatives in a state legislative body represent people, not mountains, nor plains, nor roads, nor forests, nor cattle.

Colorado's people now live in the cities and their suburbs, as once they lived on its farms and near its mines. The fact that they no longer do so does not mean that in the legislature of the state we must represent "mining" or "farming" or "cattle raising" or "water" as suggested in the Majority Opinion. If these economic functions cease to be dominant in the legislature, it is because their importance in fact has ceased to be dominant insofar as concerns the majority of the people in the State of Colorado.

People and only people, wherever they live and whatever they do, must be represented, equally and with equal voice. If such representation result in some alteration in balance of economic controls, such is the necessary implicate of a vital, fluid, and changing economic world.

2. Inequality of voter representation not only deprives the individual voter of equal protection of the laws, but it resultantly impairs the basic legislative process, which in such circumstance becomes dependent upon "interests" rather than upon people, upon the lobby and its controls rather than upon popular mandate. At the very best, a situation such as fabricated in Colorado under Amendment 7 creates a situation of stalemate between the House, responsible directly to the people, and a Senate responsible to no one but a congeries of vested "insular interests."

Such a situation necessarily results in a splitting of aim, a bifurcation of policy, and even a negation of those

purposes to which the central aims of the nation are dedicated.

A further result must be to undermine the federal system of government. Such undermining is implicit in the notion that any majority of citizens in any state may by amendment of the state constitution negative the rights of others federally guaranteed. If the right of franchise can be so taken, then what others of the rights guaranteed by this nation to its citizens may not in isolated territories and states be denied?

3: Justifications for discrimination, such as area, history, the federal analogy, the availability of initiative, and even governmental boundary are without cogency. Colorado has never recognized any basis save population in apportionment. It has never differentiated between one house and the other in basis of selection, for both have been based upon population.

Minority interests, faced with the actuality of majority controls, have, however, discovered that a sudden divorce of the Senate from the population nexus will result in control of the Senate by those minority economic interests which desire to preserve control as against the urban and suburban population. It has been found that techniques of referendum salesmanship can persuade variant population groups, for a variety of reasons, to coalesce in support of a particular amendment. In this way, it is argued, the right to equal protection of the franchise of the individual, under the Fourteenth Amendment to the Constitution, can be locally subverted, a timeworn argument, outmoded, as stated by the Colorado Supreme Court, at Appomattox.

The argument forwarded is the very argument which this Court has rejected each time it has been advanced to block the progress of civil right. The basic civil rights of an individual in a constitutionally governed state are not dependent upon the suffrance or will of his neighbors, or even of a majority of them. Such individual rights are protected absolutely, by the Constitution, and no matter by what majority a man's neighbors may wish to strip him of his right, if it is in fact constitutionally founded as a right, it must be upheld.

The gravity of the questions here presented inheres in these propositions. If indeed equality of franchise be a right, then it is protected by the Fourteenth Amendment. If so guarded and guaranteed, no State constitutional provision, purporting to ignore, negative, or modify equality of franchise, particularly in so far-reaching a matter as the selection of the Senate of a State, can stand.

G. IT IS NOT STATISTICALLY OR PRACTICALLY DIFFICULT TO ESTABLISH RATIONAL DISTRICTS COMPATIBLE WITH THE GEOGRAPHY OF COLORADO AND WITH POPULATION, FOR SELECTION OF BOTH HOUSES OF THE GENERAL ASSEMBLY.

As mentioned in the prefatory portions of this Brief, the General Assembly in 1963, in order to implement Amendment 7, enacted House Bill 65. That bill had to do with the apportionment of the House of Representatives only, and was enacted under a requirement of Amendment 7 that the districts for the selection of the House of Representatives be distributed upon the basis of population as near as may be.

Apparently, it was perfectly possible to distribute the

house of representatives on a comparatively close adherence to parity of population, the most badly under-represented areas, which are still the urban ones, having about 81% of the vote to which on a strict population basis their population is entitled, and the most over-represented, which are still the rural and mining Counties, having not more than 133% of proper representation. These distributions are graphically illustrated in excerpts from the Amicus Curiae Brief submitted below by Mr. Philip J. Carosell, and on pages K18, K20, K21 (Map), and K22 of Appendix B to that Brief, being index values of votes of the members of the House of Representatives, based on that Bill, and included as Appendix B here.

Reference to the Map (K21) will readily demonstrate that it is quite as easy to group together counties for Senatorial purposes as it is for House purposes, and if it is possible to distribute members of the House on a nearly rational basis, then it is not impossible in like manner to distribute the Senate.

When these problems were presented to the Supreme Court of Colorado, long prior to House Bill 65, there were prepared tables showing a possible distribution of the House and Senate, grouping physically proximate counties together, in order to accord with the basic requirement that a representative represent, as nearly as might be, 26,984 persons, and that a senator represent, as nearly as might be, 50,111 persons. That data was also included in statistical submissions to the Court below.

This distribution was made purely on the basis of census statistics, readily available, and a map of the State of Colorado, also readily available. It is not suggested that it is the necessary or necessarily proper distribution,

but that it is not difficult, without offending either the principles of geography or population, to distribute both the House and Senate in Colorado without any serious aberrations from a true population standard. Allegation to the contrary simply cannot stand the light of the fact.

In the hope that it is useful, that possible distribution is reflected in the table constituting Appendix C attached hereto, and representing a possible distribution of both the Senate and the House of Representatives.

We have also provided to the Clerk, for distribution with the Briefs, and for use by the Court if it believes such use desirable, a copy of the applicable Colorado census document, which size does not permit to be included herein, but which contains the 1960 statistical data underlying the within action.

CONCLUSION

In conclusion, and for the reasons above set forth, the Appellants respectfully urge the reversal of the decision below reported as 219 F. Supp. 922, and urge the invalidation of Amendment 7, so-called, to the Constitution of the State of Colorado, as herein above set forth. Appellants further urge the Court to void, in accordance with the principles of the original Memorandum Opinion, 208 F. Supp. 471, the existing apportionment and apportionment statutes of the State of Colorado, as set forth in Appendix A to this Brief.

Appellants urge this Court to order apportionment of the State of Colorado, both the House and the Senate, in accordance with the principles of equality of vote, according to each of the senatorial and house districts votes as

near as may be in accordance with the population of those districts, and suggesting that some guidance in this direction is afforded by Exhibits B and C appended hereto.

Appellants specifically urge the Court in this regard to give specific instruction as to the mode of carrying out such apportionment and the time for the doing so, and respectfully submit that, while no legislature has yet been selected upon the invalid principles of Amendment 7, there will be selected at the November, 1964, elections, in the primaries in September, 1964, and in the convention processes in June and July, 1964, those persons who will constitute the coming legislature, so that it is in a time sense most urgent that orders be made in order that the General Assembly selected in 1964 and convening in January, 1965, will be lawfully and properly constituted.

In making these suggestions, Appellants are mindful of the heavy burden suggested to the Court, but do respectfully suggest that effective implementation of a decision in these matters does require specific direction with relation to the apportionment matter, particularly in the light of impending elections.

Most respectfully submitted,

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Appendix A

CHAPTER 63

GENERAL ASSEMBLY

* * * * *

ARTICLE I

Membership

* * * * *

63-1-1. *Members of general assembly.*—The senate of general assembly of the state of Colorado shall consist of thirty-five members, and the house of representatives thereof shall consist of sixty-five members. No senatorial or representative district shall embrace the same territory within any other senatorial or representative district, respectively.

* * * * *

63-1-2. *Ratios fixed and established.*—The following ratios are hereby fixed and established for the apportionment of senators and representatives of the general assembly.

(1) The ratio for the apportionment of senators shall be:

(a) One senator for each senatorial district for the first nineteen thousand of population therein;

(b) One additional senator for each senatorial district for each additional fifty thousand of population therein or fraction over forty-eight thousand.

(2) The ratio for the apportionment of representatives shall be:

(a) One representative for each representative district for the first eight thousand of population therein;

(b) One additional representative for each additional twenty-five thousand five hundred of population therein, or fraction over twenty-two thousand four hundred.

Source: L. 53, p. 120, § 2.

* * * * *

63-1-3. *Senatorial districts.*—The state of Colorado shall be divided into twenty-five senatorial districts, numbered and entitled to the number of senators, as follows:

The city and county of Denver shall constitute the first senatorial district and be entitled to eight senators.

The county of Pueblo shall constitute the second senatorial district and be entitled to two senators.

The county of El Paso shall constitute the third senatorial district and be entitled to two senators.

The county of Las Animas shall constitute the fourth senatorial district and be entitled to one senator.

The county of Boulder shall constitute the fifth senatorial district and be entitled to one senator.

The counties of Chaffee, Park, Gilpin, Clear Creek, Douglas and Teller shall constitute the sixth senatorial district and be entitled to one senator.

The county of Weld shall constitute the seventh senatorial district and be entitled to two senators.

The county of Jefferson shall constitute the eighth senatorial district and be entitled to one senator.

The counties of Fremont and Custer shall constitute the ninth senatorial district and be entitled to one senator.

The county of Larimer shall constitute the tenth senatorial district and be entitled to one senator.

The counties of Delta, Gunnison and Hinsdale shall constitute the eleventh senatorial district and be entitled to one senator.

The counties of Logan, Sedgwick and Phillips shall constitute the twelfth senatorial district and be entitled to one senator.

The counties of Rio Blanco, Moffat, Routt, Jackson and Grand shall constitute the thirteenth senatorial district and be entitled to one senator.

The counties of Huerfano, Costilla and Alamosa shall constitute the fourteenth senatorial district and be entitled to one senator.

The counties of Saguache, Mineral, Rio Grande and Conejos shall constitute the fifteenth senatorial district and be entitled to one senator.

The county of Mesa shall constitute the sixteenth senatorial district and be entitled to one senator.

The counties of Montrose, Ouray, San Miguel and Dolores shall constitute the seventeenth senatorial district and be entitled to one senator.

The counties of Kit Carson, Cheyenne, Lincoln and Kiowa shall constitute the eighteenth senatorial district and be entitled to one senator.

The counties of San Juan, Montezuma, La Plata and Archuleta shall constitute the nineteenth senatorial district and be entitled to one senator.

The counties of Yuma, Washington and Morgan shall constitute the twentieth senatorial district and be entitled to one senator.

The counties of Garfield, Summit, Eagle, Lake and Pitkin shall constitute the twenty-first senatorial district and be entitled to one senator.

The counties of Arapahoe and Elbert shall constitute the twenty-second senatorial district and be entitled to one senator.

The counties of Otero and Crowley shall constitute the twenty-third senatorial district and be entitled to one senator.

The county of Adams shall constitute the twenty-fourth senatorial district and be entitled to one senator.

The counties of Bent, Prowers and Baca shall constitute the twenty-fifth senatorial district and be entitled to one senator.

. . . . . .

63-1-4. *Election of senators.*—Four senators shall be elected from the first senatorial district and one each from the second, third, sixth, seventh, tenth, twelfth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, twentieth and twenty-fifth districts at the general election held in November, 1954, and every four years thereafter.

Four senators shall be elected from the first senatorial district and one each from the second, third, fourth, fifth, seventh, eighth, ninth, eleventh, thirteenth, nineteenth, twenty-first, twenty-second, twenty-third, and twenty-fourth districts at the general election held in November, 1956, and every four years thereafter.

* * * * *

63-1-5. *Senators keep office—vacancies.*—Nothing in this article shall be construed to cause the removal of any senator from his office for the term for which he has been elected, but all such senators shall serve the term for which they were elected; provided, that in case of a vacancy caused by the death, resignation or otherwise of any such senator or senators, the vacancy shall be filled as provided by law from the new district as provided for in this article.

Source: L. 53, p. 122, § 5.

* * * * *

63-1-6. *Members of house of representatives.*—The members of the house of representatives shall be divided among the several counties of the state as follows:

The city and county of Denver shall have seventeen.

The county of Pueblo shall have four.

The county of Weld shall have three.

The county of El Paso shall have three.

The county of Las Animas shall have one.

The county of Boulder shall have two.

The county of Larimer shall have two.

The county of Arapahoe shall have two.

The counties of Crowley and Otero shall have two.

The county of Mesa shall have two.

The county of Delta shall have one.

The county of Huerfano shall have one.

The county of Jefferson shall have two.

The county of Logan shall have one.

The county of Morgan shall have one.

The county of Adams shall have two.

The county of Yuma shall have one.

The counties of Washington and Kit Carson shall have one.

The counties of Prowers and Baca shall have one.

The counties of Routt, Moffat, Grand and Jackson shall have one.

The counties of Montrose and Ouray shall have one.

The counties of San Miguel, Dolores and Montezuma shall have one.

The counties of La Plata and San Juan shall have one.

The counties of Hinsdale, Gunnison and Saguache shall have one.

The counties of Rio Grande and Mineral shall have one.

The counties of Conejos and Archuleta shall have one.

The counties of Alamosa and Costilla shall have one.

The counties of Fremont and Custer shall have one.

The counties of Park, Teller, Douglas and Elbert shall have one.

The counties of Lake and Chaffee shall have one.

The counties of Eagle, Pitkin, Summit, Clear Creek and Gilpin shall have one.

The counties of Rio Blanco and Garfield shall have one.

The counties of Sedgwick and Phillips shall have one.

The counties of Cheyenne and Lincoln shall have one.

The counties of Kiowa and Bent shall have one.

* * * * *

63-1-7. *Representatives keep office — biennial elections.*—Nothing in this article shall be construed to cause the removal of any representative from his present term of office, and representatives shall be elected under the provisions of this article beginning with the general election held in November, 1954, and every two years thereafter.

* * * * *

63-1-8. *New counties.*—In the event that any new county is created at any time after the passage of this article, and the legislature has not provided for the attaching of said new county to a specifically mentioned district, then such new county shall be deemed to be in the senatorial or representative district that said territory was in prior to its creation.

Appendix B (K-18)

TABLE II-B

INDEX VALUES OF VOTES OF MEMBERS OF THE COLORADO STATE HOUSE OF REPRESENTATIVES AS PERCENTAGES OF STATE-WIDE AVERAGE (100%), BY COUNTIES, 1960 CENSUS

BASED ON PROVISIONS OF CONSTITUTIONAL AMENDMENT NO. 7, PASSED BY COLORADO ELECTORATE ON NOVEMBER 6, 1962, AND HOUSE BILL NO. 65, ENACTED BY THE FORTY-FOURTH COLORADO GENERAL ASSEMBLY, 1963

Colorado Population, 1960: 1,753,947
Number of Representatives: 65
Average Population Represented, State-wide: 26,984
Average Population, 26,984: 100%, base

Rank of Percentage Values of Votes in House of Representatives, By Counties, 1960 Census Based on Provisions of Amendment No. 7 and House Bill No. 65

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
District	Counties in Representative Districts	County Population	Number of Representatives	Average Population Represented	County Average as Percent of State (100%) Average
51	Logan	20,000	1	20,302	133
65	Cheyenne	2,789	1	21,189	127
	Elbert	3,708			
	Kiowa	2,425			
	Kit Carson	6,957			
	Lincoln	5,310			

APPENDIX B (K-18) (Continued)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
District	Counties in Representative Districts	County Population	Number of Representatives	Average Population Represented	County Average as Percent of State (100%) Average
55	Morgan	21,192	1	21,192	127
57	Delta	15,602	1	21,287	127
	Gunnison	5,477			
	Hinsdale	208			
52	Custer	1,305	1	21,501	126
	Fremont	20,196			
63	Alamosa	10,000	1	22,340	121
	Huerfano	208			
	Saguache	4,473			
62	Archuleta	2,629	1	22,641	119
	Conejos	8,428			
	Mineral	424			
	Rio Grande	11,160			
61	Clear Creek	2,793	1	23,827	113
	Gilpin	685			
	Grand	3,557			
	Jackson	1,758			
	Moffat	7,061			
	Routt	5,900			
	Summit	2,073			
43–45	Weld	72,344	3	24,115	112
54	Costilla	4,219	1	24,202	111
	Las Animas	19,983			

APPENDIX B (K-18) (Continued)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
District	Counties in Representative Districts	County Population	Number of Representatives	Average Population Represented	County Average as Percent of State (100%) Average
56	Phillips	4,440	1	24,219	111
	Sedgwick	5,353			
	Washington	6,625			
	Yuma	8,912			
60	Eagle	4,677	1	24,225	111
	Garfield	12,017			
	Pitkin	2,381			
	Rio Blanco	5,150			
58	Chaffee	8,298	1	24,532	110
	Douglas	4,816			
	Lake	7,101			
	Park	1,822			
	Teller	2,495			
40–42	Boulder	74,254	3	24,751	109
48–49	Mesa	50,715	2	25,358	105
64	Dolores	2,196	1	25,876	104
	Montrose	18,286			
	Ouray	1,601			
	San Juan	849			
	San Miguel	2,944			
36–39	Arapahoe	113,426	4	26,370	102
46–47	Larimer	53,343	2	26,672	101
50	Baca	6,310	1	27,025	99
	Bent	7,419			
	Prowers	13,296			

APPENDIX B (K-18) (Continued)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
District	Counties in Representative Districts	County Population	Number of Representatives	Average Population Represented	County Average as Percent of State (100%) Average
1–18	Denver	493,887	18	27,473	98
53	Crowley	3,978	1	28,106	96
	Otero	24,128			
19–23	El Paso	143,742	5	28,748	94
32–35	Pueblo	118,707	4	29,677	91
28–31	Adams	120,296	4	30,074	90
24–27	Jefferson	127,520	4	31,818	85
59	La Plata	19,225	1	33,249	81
	Montezuma	14,024			

Appendix B (K-20)

TABLE II-E

INDEX VALUES OF VOTES OF MEMBERS OF THE COLORADO STATE HOUSE OF REPRESENTATIVES AS PERCENTAGES OF STATE-WIDE AVERAGE (100%), BY DISTRICTS, 1960 CENSUS

BASED ON PROVISIONS OF HOUSE BILL NO. 65, ENACTED BY THE FORTY-FOURTH COLORADO GENERAL ASSEMBLY, 1963. SIGNED BY GOVERNOR JOHN A. LOVE ON FEBRUARY 11, 1963

Colorado Population, 1960: 1,753,947
Number of Representative Districts: 65
Number of Representatives: 65
Average Population Represented, State-Wide: 26,984
Average Population, 26,984: 100%, base

Column 1	Column 2	Column 3	Column 4	Column 5
District Number	County or Counties in District	District Population*	Number of Representatives	District Population Average as Percent of State (100%) Average
1	Denver	28,348**	1	95
2	Denver	28,857	1	94
3	Denver	27,956	1	97
4	Denver	26,072	1	103
5	Denver	23,587**	1	114
6	Denver	27,331	1	99
7	Denver	28,249	1	96
8	Denver	32,417**	1	83
9	Denver	29,704	1	91

*Source: Colorado State Legislative Council, Jan. 18, and Feb. 8, 1963.
**These districts show plus or minus effects of annexation to Denver.

APPENDIX B (K-20) (Continued)

Column 1	Column 2	Column 3	Column 4	Column 5
District Number	County or Counties in District	District Population*	Number of Representatives	District Population Average as Percent of State (100%) Average
10	Denver	29,511	1	91
11	Denver	26,251	1	103
12	Denver	26,871	1	100
13	Denver	26,493**	1	102
14	Denver	24,478**	1	110
15	Denver	29,437	1	92
16	Denver	26,476	1	102
17	Denver	26,679	1	101
18	Denver	25,790	1	105
19	El Paso	28,595	1	94
20	El Paso	33,328	1	81
21	El Paso	27,790	1	97
22	El Paso	24,719	1	109
23	El Paso	29,310	1	92
24	Jefferson	30,964	1	87
25	Jefferson	33,653**	1	80
26	Jefferson	35,123	1	77
27	Jefferson	27,534**	1	98
28	Adams	30,479	1	89
29	Adams	29,259	1	92
30	Adams	27,446	1	98
31	Adams	33,112	1	81

*Source: Colorado State Legislative Council, Jan. 18, and Feb. 8, 1963.
**These districts show plus or minus effects of annexation to Denver.

APPENDIX B (K-20) (Continued)

Column 1	Column 2	Column 3	Column 4	Column 5
District Number	County or Counties in District	District Population*	Number of Representatives	District Population Average as Percent of State (100%) Average
32	Pueblo	25,435	1	106
33	Pueblo	25,540	1	106
34	Pueblo	32,714	1	82
35	Pueblo	35,018	1	77
36	Arapahoe	32,554**	1	83
37	Arapahoe	29,030**	1	93
38	Arapahoe	22,081**	1	122
39	Arapahoe	21,813**	1	124
40	Boulder	27,222	1	99
41	Boulder	24,381	1	111
42	Boulder	22,651	1	119
43	Weld	24,303	1	111
44	Weld	24,014	1	112
45	Weld	24,027	1	112
46	Larimer	28,162	1	96
47	Larimer	25,181	1	107
48	Mesa	26,941	1	100
49	Mesa	23,774	1	114
50	Bent Prowers Baca	27,025	1	99
51	Logan	20,302	1	133

*Source: Colorado State Legislative Council, Jan. 18, and Feb. 8, 1963.
**These districts show plus or minus effects of annexation to Denver.

APPENDIX B (K-20) (Continued)

Column 1	Column 2	Column 3	Column 4	Column 5
District Number	County or Counties in District	District Population	Number of Representatives	District Population Average as Percent of State (100%) Average
52	Fremont Custer	21,501	1	126
53	Otero Crowley	28,106	1	96
54	Las Animas Costilla	24,202	1	111
55	Morgan	21,192	1	127
56	Yuma Phillips Sedgwick Washington	24,219	1	111
57	Delta Gunnison Hinsdale	21,287	1	127
58	Park Teller Douglas Chaffee Lake	24,532	1	110
59	La Plata Montezuma	33,249	1	81

*Source: Colorado State Legislative Council, Jan. 18, and Feb. 8, 1963.
**These districts show plus or minus effects of annexation to Denver.

APPENDIX B (K-20) (Continued)

Column 1 District Number	Column 2 County or Counties in District	Column 3 District Population*	Column 4 Number of Representatives	Column 5 District Population Average as Percent of State (100%) Average
60	Garfield Eagle Pitkin Rio Blanco	24,225	1	111
61	Summit Moffat Routt Jackson Grand Clear Creek Gilpin	23,827	1	113
62	Conejos Rio Grande Mineral Archuleta	22,641	1	119
63	Alamosa Huerfano Saguache	22,340	1	121
64	Montrose Ouray San Miguel Dolores San Juan	23,876	1	104

*Source: Colorado State Legislative Council, Jan. 18, and Feb. 8, 1963.
**These districts show plus or minus effects of annexation to Denver.

APPENDIX B (K-20) (Continued)

Column 1	Column 2	Column 3	Column 4	Column 5
District Number	County or Counties in District	District Population*	Number of Representatives	District Population Average as Percent of State (100%) Average
65	Lincoln Kit Carson Elbert Cheyenne Kiowa	21,189	1	127

*Source: Colorado State Legislative Council, Jan. 18, and Feb. 8, 1963.
**These districts show plus or minus effects of annexation to Denver.

Appendix B (K-21)

This map shows how Colorado's House of Representative districts will be divided up under the new apportionment, passed by the Legislature and approved by Governor Love.

Appendix B (K-22)

TABLE II-F

RANK OF INDEX VALUES OF VOTES OF MEMBERS OF THE COLORADO STATE HOUSE OF REPRESENTATIVES AS PERCENTAGES OF STATE-WIDE AVERAGE (100%), BY REPRESENTATIVE DISTRICTS, 1960 CENSUS

BASED ON PROVISIONS OF HOUSE BILL NO. 65, ENACTED BY THE FORTY-FOURTH COLORADO GENERAL ASSEMBLY, 1963. SIGNED BY GOVERNOR JOHN A. LOVE ON FEBRUARY 11, 1963

Colorado Population, 1960: 1,753,947
Number of Representative Districts: 65
Number of Representatives: 65, one for each district
Average Population Represented, State-Wide: 26,984
Average Population, 26,984: 100%, base

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
District No.	County or Counties in District	District Population*	District Population Average as Percent of State (100%) Average	Ratio of Highest Percentage District to All other Districts	Ratio of All Districts to Lowest Percentage District
51	Logan	20,302	133	1.0 - 1	1.7 - 1
65	Cheyenne Elbert Kiowa Kit Carson Lincoln	21,189	127	1.0 - 1	1.6 - 1
55	Morgan	21,192	127	1.0 - 1	1.6 - 1

*Source: Colorado State Legislative Council, Jan. 18 and Feb. 8, 1963.
**These districts show plus or minus effects of annexation to Denver.

APPENDIX B (K-22) (Continued)

Column 1 District No.	Column 2 County or Counties in District	Column 3 District Population*	Column 4 District Population Average as Percent of State (100%) Average	Column 5 Ratio of Highest Percentage District to All other Districts	Column 6 Ratio of All Districts to Lowest Percentage District
57	Delta Gunnison Hinsdale	21,287	127	1.0 - 1	1.6 - 1
52	Custer Fremont	21,501	126	1.1 - 1	1.6 - 1
39	Arapahoe	21,813**	124	1.1 - 1	1.6 - 1
38	Arapahoe	22,081**	122	1.1 - 1	1.6 - 1
63	Alamosa Huerfano Saguache	22,340	121	1.1 - 1	1.6 - 1
62	Archuleta Conejos Mineral Rio Grande	22,641	119	1.1 - 1	1.5 - 1
42	Boulder	22,651	119	1.1 - 1	1.5 - 1
5	Denver	23,587**	114	1.2 - 1	1.5 - 1
49	Mesa	23,774	114	1.2 - 1	1.5 - 1

*Source: Colorado State Legislative Council, Jan. 18 and Feb. 8. 1963.
**These districts show plus or minus effects of annexation to Denver.

APPENDIX B (K-22) (Continued)

Column 1 District No.	Column 2 County or Counties in District	Column 3 District Population*	Column 4 District Population Average as Percent of State (100%) Average	Column 5 Ratio of Highest Percentage District to All other Districts	Column 6 Ratio of All Districts to Lowest Percentage District
61	Clear Creek Gilpin Grand Jackson Moffat Routt Summit	23,827	113	1.2 - 1	1.5 - 1
44	Weld	24,014	112	1.2 - 1	1.5 - 1
45	Weld	24,027	112	1.2 - 1	1.5 - 1
54	Costilla Las Animas	24,202	111	1.2 - 1	1.4 - 1
56	Phillips Sedgwick Washington Yuma	24,219	111	1.2 - 1	1.4 - 1
60	Eagle Garfield Pitkin Rio Blanco	24,225	111	1.2 - 1	1.4 - 1
43	Weld	24,303	111	1.2 - 1	1.4 - 1
41	Boulder	24,381	111	1.2 - 1	1.4 - 1
14	Denver	24,478**	110	1.2 - 1	1.4 - 1

*Source: Colorado State Legislative Council, Jan. 18 and Feb. 8, 1963.
**These districts show plus or minus effects of annexation to Denver

APPENDIX B (K-22) (Continued)

Column 1 District No.	Column 2 County or Counties in District	Column 3 District Population*	Column 4 District Population Average as Percent of State (100%) Average	Column 5 Ratio of Highest Percentage District to All other Districts	Column 6 Ratio of All Districts to Lowest Percentage District
58	Chaffee Douglas Lake Park Teller	24,532	110	1.2 - 1	1.4 - 1
22	El Paso	24,719	109	1.2 - 1	1.4 - 1
47	Larimer	25,181	107	1.2 - 1	1.4 - 1
32	Pueblo	25,435	106	1.3 - 1	1.4 - 1
33	Pueblo	25,540	106	1.3 - 1	1.4 - 1
18	Denver	25,790	105	1.3 - 1	1.4 - 1
64	Dolores Ouray Montrose San Juan San Miguel	25,876	104	1.3 - 1	1.4 - 1
4	Denver	26,072	103	1.3 - 1	1.3 - 1
11	Denver	26,251	103	1.3 - 1	1.3 - 1
16	Denver	26,476	102	1.3 - 1	1.3 - 1
13	Denver	26,493**	102	1.3 - 1	1.3 - 1
17	Denver	26,679	101	1.3 - 1	1.3 - 1

*Source: Colorado State Legislative Council, Jan. 18 and Feb. 8, 1963.
**These districts show plus or minus effects of annexation to Denver.

APPENDIX B (K-22) (Continued)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
District No.	County or Counties in District	District Population*	District Population Average as Percent of State (100%) Average	Ratio of Highest Percentage District to All other Districts	Ratio of All Districts to Lowest Percentage District
12	Denver	26,871	100	1.3 - 1	1.3 - 1
48	Mesa	26,941	100	1.3 - 1	1.3 - 1
	COLORADO, 100% base				
50	Baca Bent Prowers	27,025	99	1.3 - 1	1.3 - 1
40	Boulder	27,222	99	1.3 - 1	1.3 - 1
6	Denver	27,331	99	1.3 - 1	1.3 - 1
30	Adams	27,446	98	1.4 - 1	1.3 - 1
27	Jefferson	27,534**	98	1.4 - 1	1.3 - 1
21	El Paso	27,790	97	1.4 - 1	1.3 - 1
3	Denver	27,956	97	1.4 - 1	1.3 - 1
53	Crowley Otero	28,106	96	1.4 - 1	1.2 - 1
46	Larimer	28,162	96	1.4 - 1	1.2 - 1
7	Denver	28,249	96	1.4 - 1	1.2 - 1
1	Denver	28,348**	95	1.4 - 1	1.2 - 1
19	El Paso	28,595	94	1.4 - 1	1.2 - 1
2	Denver	28,857	94	1.4 - 1	1.2 - 1

*Source: Colorado State Legislative Council, Jan. 18 and Feb. 8, 1963.
**These districts show plus or minus effects of annexation to Denver.

APPENDIX B (K-22) (Continued)

Column 1 District No.	Column 2 County or Counties in District	Column 3 District Population*	Column 4 District Population Average as Percent of State (100%) Average	Column 5 Ratio of Highest Percentage District to All other Districts	Column 6 Ratio of All Districts to Lowest Percentage District
37	Arapahoe	29,030**	93	1.4 - 1	1.2 - 1
29	Adams	29,259	92	1.5 - 1	1.2 - 1
23	El Paso	29,310	92	1.5 - 1	1.2 - 1
15	Denver	29,437	92	1.5 - 1	1.2 - 1
10	Denver	29,511	91	1.5 - 1	1.2 - 1
9	Denver	29,704	91	1.5 - 1	1.2 - 1
28	Adams	30,479	89	1.5 - 1	1.2 - 1
24	Jefferson	30,964	87	1.5 - 1	1.1 - 1
8	Denver	32,417**	83	1.6 - 1	1.1 - 1
36	Arapahoe	32,554**	83	1.6 - 1	1.1 - 1
34	Pueblo	32,714	82	1.6 - 1	1.1 - 1
31	Adams	33,112	81	1.6 - 1	1.1 - 1
59	La Plata Montezuma	33,249	81	1.6 - 1	1.1 - 1
20	El Paso	33,328	81	1.6 - 1	1.1 - 1
25	Jefferson	33,653**	80	1.7 - 1	1.0 - 1
35	Pueblo	35,018	77	1.7 - 1	1.0 - 1
26	Jefferson	35,123	77	1.7 - 1	1.0 - 1

*Source: Colorado State Legislative Council, Jan. 18 and Feb. 8, 1963.
**These districts show plus or minus effects of annexation to Denver.

Appendix C

POSSIBLE DISTRIBUTION

1. *Senate Districts*

Dist.	Counties Included	REPRESENTATION: Now	Pop. Basis	Sug-gested	POPULATION: Total Suggested Dist.	Total per Senator
1	City and County of Denver	8	9.85	9	493,887	54,765
2	Pueblo	2	2.40	3	118,707	
23	Crowley	1	.56		28,106	
	Otero	3	2.96	3	146,813	48,937
3	El Paso	2	2.86	3	143,742	47,914
4	Las Animas	1	0.40	1	19,983	
14	Huerfano	1	0.44		22,086	
	Costilla	2	0.84	1	42,069	42,069
	Alamosa					

Note: It is clear that even as combined, these districts would be over-represented somewhat, but it is almost impossible to make all districts precisely equal when working with the requirement imposed by counties as units and the existing district scheme.

5	Boulder	1	1.50	2	74,254	37,127

Note: There is no other existing district with which it appears geographically possible to combine Boulder. It is precisely on the line as regards present Senatorial representation between a proper representation of 1 and 2. It is included in Census as part of the urban area comprising Denver, Adams, Jef-

APPENDIX C (Continued)

Dist.	Counties Included	REPRESENTATION: Now	Pop. Basis	Sug-gested	POPULATION: Total Suggested Dist.	Total per Senator
		ferson, Arapahoe, and Boulder Counties. Thus some judgment is to be exercised as to whether one more Senator go to Denver, and no increase to Boulder, whose population increased 53.7% while that of Denver rose only 18.8%, or to Boulder. Probably Boulder population will continue to increase faster than Denver, resulting in the suggested arrangement perhaps avoiding future-occurring distortion.				
6	Chaffee Park Gilpin Clear Creek Douglas	1	0.37	1	18,414	
9	Fremont Custer	1	0.43		21,501	
		2	0.80	1	39,915	39,915
	Note: See note in 4 and 14 above.					
7	Weld	2	1.44	2	72,344	
12	Logan Sedgwick Phillips	1	0.58		28,984	
		3	2.02	2	101,328	50,664

APPENDIX C (Continued)

Dist.	Counties Included	REPRESENTATION: Now	Pop. Basis	Sug-gested	POPULATION: Total Suggested Dist.	Total per Senator
8	Jefferson	1	2.55	3	127,520	42,506
	Note: In view of the 129% increase in population in this area between 1950 and 1960, and the basic population trends which indicate continued increase of population in the area, resolution of the fractional factor in favor of an additional member for this County would appear justified.					
10	Larimer	1	1.10	1	53,343	53,343
11	Delta					
	Gunnison	1	0.42		21,287	
	Hinsdale			1		
17	Montrose					
	Ouray					
	San Miguel	1	0.52		25,027	
	Dolores	2	0.94	1	46,314	46,314

APPENDIX C (Continued)

Dist.	Counties Included	REPRESENTATION: Now	Pop. Basis	Sug-gested	POPULATION: Total Suggested Dist.	Total per Senator
13	Rio Blanco Moffat Routt Jackson Grand	1	0.47	1	23,426	
21	Garfield Summit Eagle	1	0.56		28,249	
	Lake Pitkin	2	1.03	1	51,675	51,675
15	Saguache Mineral Rio Grande Conejos	1	0.44	1	24,485	
19	San Juan Montezuma La Plata	1	0.73		36,727	
	Archuleta	2	1.14	1	61,212	61,212

APPENDIX C (Continued)

Dist.	Counties Included	REPRESENTATION: Now	Pop Basis	Suggested	POPULATION: Total Suggested Dist.	Total per Senator
16	Mesa	1	1.0	1	50,715	50,715
18	Kit Carson Cheyenne Lincoln Kiowa	1	0.35		17,481	
25	Bent Prowers	1	0.54		27,025	
	Baca	2	0.89	1	44,506	44,506
20	Yuma Washington Morgan	1	0.73	1	36,729	36,729

Note: This district is over-represented even as proposed, but geographically there appears to be no reasonable combination, and it is a group of persons sufficiently numerous to require specific representation. The geographically difficult position of this group of counties makes a somewhat greater representation than population justifies an inevitability.

22	Arapahoe Elbert	1	2.34	2	117,134	58,567

Note: The district is obviously slightly under-represented, inevitable in view of the fractional representative problem. However, when combined with Jefferson at 3 Senators, as suggested in 8 above, and Adams, with 2 Senators, as suggested in 24 below, this gives the Tri-Counties 7 total representatives for 361,242 population, or 51,606 per Senator, which is almost perfect representation from a population point of view.

APPENDIX C (Continued)

Dist.	Counties Included	REPRESENTATION: Now	Pop. Basis	Sug-gested	POPULATION: Total Suggested Dist.	Total per Senator
24	Adams	1	2.41	2	120,296	60,148

Note: See note to 22 (Arapahoe & Elbert) above.

It is obvious that the above device—which is shown merely as a suggestion that it is quite possible, without difficulty, to make a judicial distribution of representation which will be essentially just,—achieves a substantially proper representation. Denver and the Tri-Counties have 49% of population. Under this device, they have 16 out of 35 representatives, being 45.7% of the Senate, a substantial improvement over the 31.4% now allowed, and almost as close as practicable to mathematical exactness. Similarly, Denver, the Tri-Counties, Pueblo, El Paso, and Boulder, contain 63% of the State's population. Under the above scheme, these counties have 24 out of 35 members of the Senate, or 68.5%, again near mathematical exactness, and probably almost exact in view of the fact that these are the areas in which substantial growth is continuing to take place.

Rather a similar method of distribution can be suggested for the House of Representatives:

APPENDIX C (Continued)

2. *House Districts*

Dist.	Counties Included	REPRESENTATION: Now	Pop. Basis	Sug-gested	POPULATION: Total Suggested Dist.	Total per Rep.
1.	City and County of Denver	17	18.25	18	493,887	27,438
2	Pueblo	4	4.45)	6	118,707	
	Crowley)		)			
	)	2	1.06)		28,106	
	Otero)	—	—	—	—	
		6	5.51	6	146,813	24,468
3	Weld	3	2.68		72,344	
	Logan	1	1.08		28,984	
				4		
	Sedgwick)					
	)	1				
	Phillips)	—	—	—	—	
		5	3.74	4	101,328	25,332
4.	El Paso	3	5.3	5	143,742	28,748
5	Las Animas	1	0.74		19,983	
	Huerfano	1	0.81		22,086	
				2		
	Costilla)					
	)	1	1			
	Alamosa)	—	—	—	—	
		3	1.55	2	42,069	21,034

Note: Even combining these districts, they are substantially over-represented, but again the limits of units of representation make impossible a complete situation of equality.

APPENDIX C (Continued)

Dist.	Counties Included	REPRESENTATION: Now	Pop. Basis	Suggested	POPULATION: Total Suggested Dist.	Total per Rep.
		SPECIAL NOTE: Huerfano County, above, now allowed one representative, is the most violently over-represented area in the State, having only a population of 7,867 persons, who have a representation identical to that now allowed 63,260 persons in the County of Jefferson. There are too few persons in the County even to justify a representative under the grossly improper present statute, which requires an 8,000 population minimum. This 9 to 1 distortion is constitutionally insupportable.				
6	Boulder	2	2.70	3	74,254	24,418
7	Larimer	2	1.96	2	53,343	26,671
8	Arapahoe	2	4.20		113,426	
	Elbert	Fractional	.32	5.0	3,708	
	Douglas				4,816	
		2+	4.52	5.0	121,950	24,390
9	Mesa	2	1.88	2	50.715	25,357
10	Delta	1	0.58	1	15,602	
	Gunnison	)				
		) 1	0.36		5,685	
	Hinsdale	)				
	Saguache				4,473	
		2	0.94	1	25,760	25,760
11	Jefferson	2	4.72		127,520	
	Park	Fractional	.16	5	4,317	
	Teller					
		2+	4.88	5	131,837	26,367

APPENDIX C (Continued)

Dist.	Counties Included	REPRESENTATION: Now	Pop. Basis	Sug-gested	POPULATION: Total Suggested Dist.	Total per Rep.
12	Morgan	1	0.78		21,192	
	Washington	1	0.505	2	13,582	
	Kit Carson					
	Yuma	1	0.33		8,912	
		3	1.615	2	43,686	21,848
13	Adams	2	4.55	4	120,296	30,074
14	Prowers	1	0.72		19,606	
	Baca					
	Cheyenne	1	0.30	1	8,099	
	Lincoln					
	Bent	1	0.366		9,844	
	Kiowa					
		3	1.356	1	36,549	36,549

Note: Again this is a distortion made necessary by the problem of counties as units and the indivisibility of a representative.

15	Routt	1	0.65		18,276	
	Moffat					
	Grand					
	Jackson					
	Rio Blanco	1	0.635	2	17,167	
	Garfield					
	Summit	1	0.465		12,609	
	Eagle					
	Pitkin					
	Clear Creek					
	Gilpin					
		3	1.750	2	48,052	24,026

APPENDIX C (Continued)

Dist.	Counties Included	REPRESENTATION: Now	Pop. Basis	Sug-gested	POPULATION: Total Suggested Dist.	Total per Rep.
16	Montrose Ouray San Miguel	1 Frac-tional	0.74 0.185	1	19,887 5,140	
	Dolores	—	—	—	—	
		1	0.925	1	25,027	25,027
17	San Juan La Plata	1	0.755		20,074	
	Rio Grande	1	0.430		11,585	
	Mineral			2		
	Conejos Archuleta	1	0.410		11,057	
	Montezuma	Frac-tional	0.520		14,024	
		—	—	—	—	
		3	2.110	2	58,720	29,360